

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY,
INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION

Master Dkt:
1:13-md-02419-RWZ

THIS DOCUMENT RELATES
TO:

All Actions

VIDEOTAPED DEPOSITION OF
SCOTT BUTLER

9:03 a.m.
February 5, 2015

Suite 1100
315 Deaderick Street
Nashville, Tennessee

Blanche J. Dugas, RPR, CCR No. B-2290

Page 3

1 ~- APPEARANCES CONTINUED ~-
2 On Behalf of Saint Thomas Outpatient Neurosurgical
Center, LLC; Howell Allen, a Professional Corporation;
3 John W. Culclasure, M.D.; Debra V. Schamberg, RN;
4 CLARENCE J. "C.J." GIDEON, JR., Esquire
5 MATTHEW CLINE, Esquire
6 CHRISTOPHER TARDIO, Esquire
7 Gideon, Cooper & Essary, PLC
8 Suite 1100
9 315 Deaderick Street
10 Nashville, Tennessee 37238
11 (615) 254-0400
12 cj@gideoncooper.com
13 matt@gideoncooper.com
14 chris@gideoncooper.com

15 On Behalf of St. Thomas Health; St. Thomas Network;
16 St. Thomas West Hospital f/k/a St. Thomas Hospital:
17 ERIC J. HOFFMAN, Esquire
18 ADAM T. SCHRAHEK, Esquire
19 Norton, Rose, Fulbright
20 Suite 1100
21 98 San Jacinto Boulevard
22 Austin, Texas 78701
23 (512) 536-5232
24 adam.schramek@nortonrosefulbright.com
25 eric.hoffman@nortonrosefulbright.com

16 AMY D. HAMPTON, Esquire
17 Bradley, Arant, Boulton & Cummings, LLP
18 Suite 700, Roundabout Plaza
19 1600 Division Street
20 Nashville, Tennessee 37203
21 (615) 244-2582
22 (615) 252-6379 (facsimile)
23 ahampton@babco.com
24 On Behalf of Premier Orthopaedic & Sports Medicine
25 Associates of Southern New Jersey, LLC d/b/a Premier
Orthopaedic & Sports Associates, LLC; Premier
Orthopaedic Associates Surgical Center, LLC:
JAY J. BLUMBERG, Esquire
Blumberg & Wolk, LLC
158 Delaware Street
Woodbury, New Jersey 08096
(856) 848-7472
(856) 848-8012 (facsimile)
jblumberg@blumberglawoffices.com

Page 2

APPEARANCES OF COUNSEL

1 On Behalf of the Plaintiffs:
2 GEORGE NOLAN, Esquire
3 WILLIAM LEADER, Esquire
4 Leader, Bulso & Nolan, PLC
5 Suite 1740
6 414 Union Street
7 Nashville, Tennessee 37219-1734
8 (615) 780-4114
9 (615) 780-4122 (facsimile)
10 gnolan@leaderbulso.com
11 bleader@leaderbulso.com

12 J. GERARD STRANCH, IV, Esquire
13 Branstetter, Stranch & Jennings, PLLC
14 227 Second Avenue North
15 Nashville, Tennessee 37201
16 (615)254-8801
17 gerards@branstetterlaw.com
18 MARK P. CHALOS, Esquire
19 Lieff, Cabraser, Heimann & Bernstein, LLP
20 Suite 1650, One Nashville Place
21 150 Fourth Avenue
22 Nashville, Tennessee 37219-2423
23 (615) 313-9000
24 (615) 313-9965 (facsimile)
25 mchalos@lchb.com

DANIEL L. CLAYTON, Esquire
Kinnard, Clayton & Beveridge
127 Woodmont Boulevard
Nashville, Tennessee 37205
(615) 686-2501
(615) 297-1505 (facsimile)
dclayton@kcbattys.com

Page 4

1 ~- APPEARANCES CONTINUED ~-
2 On Behalf of UniFirst Corporation:
3 JIM REHNQUIST, Esquire
4 KATE E. MACLEMAN, Esquire
5 Goodwin Procter, LLP
6 53 State Street, Exchange Place
7 Boston, Massachusetts 02109
8 (617) 570-1000
9 (617) 523-1231 (facsimile)
10 jrehnquist@goodwinprocter.com
11 kmacleman@goodwinprocter.com

12 On Behalf of Specialty Surgery Center - Crossville,
13 PLLC; Kenneth R. Lister, M.D.; Kenneth R. Lister,
14 M.D., PC:

15 MEGAN A. CARRICK, Esquire
16 Brewer, Krause, Brooks, Chastain & Burrow, PLLC
17 Suite 2600
18 611 Commerce Street
19 Nashville, Tennessee 37203
20 (615)256-8787
21 (615)256-8985 (facsimile)
22 mcarrick@bkblaw.com

* The Following Attorneys Appeared Via Video Stream *

23 CLARE CARROLL, Esquire
24 McCarthy, Bouley & Barry, PC
25 47 Thorndike Street
Cambridge, Massachusetts 02141
(617) 225-2211
(617) 225-7711 (facsimile)
cfc@mbblaw.com

REBECCA BLAIR, Esquire
The Blair Law Firm
Suite 207
5214 Maryland Way
Brentwood, Tennessee 37027
(615) 515-4492
rblair@blair-law.com

Page 5

~~ APPEARANCES CONTINUED ~~

DUSTIN CLINT DANIEL, Esquire
Schulman, LeRoy & Bennett, PC
7th Floor
501 Union Street
Nashville, Tennessee 37219-0676
(615) 244-6670
(615) 254-5407 (facsimile)
ddaniel@slblawfirm.com

KATHERINE DENNIS, Esquire
Capplis, Connors & Carroll, PC
Suite 220
18 Tremont Street
Boston, Massachusetts 02108
(617) 227-0722

MELISSA HOWARD, Esquire
Leader, Bulso & Nolan, PLC
Suite 1740
414 Union Street
Nashville, Tennessee 37219-1734
(615) 780-4114
(615) 780-4122 (facsimile)
mhoward@leaderbulso.com

BRANDON KULWICKI, Esquire
Stewart, Courington, Dugger & Dean
Suite 200

1701 N. Market Street
Dallas, Texas 75202
(214) 615-2025
(214) 615-2001 (facsimile)
brandon@scddlaw.com

J. KYLE ROBY, Esquire
English, Lucas, Priest & Owsley, LLP
1101 College Street
Bowling Green, Kentucky 42102-0770
(270) 782-6500
(270) 782-7782 (facsimile)
kroby@elpolaw.com

Page 6

~~ APPEARANCES CONTINUED ~~

LOUIS W. VOELKER, Esquire
Eichhorn & Eichhorn, LLP
200 Russell Street
Hammond, Indiana 46320
(219) 931-0560
lvoelker@eichhorn.com

MARK ZAMORA, Esquire
The Orlando Firm, PC
Suite 2600
5 Concourse Parkway
Atlanta, Georgia 30328
(404) 373-1800
mark@markzamora.com

JEREMY CAIN, Esquire
Gideon, Cooper & Essary, PLC
Suite 1100
315 Deaderick Street
Nashville, Tennessee 37238
(615) 254-0400
jeremy@gideoncooper.com

Page 7

Videotaped Deposition of Scott Butler
February 5, 2015

VIDEOGRAPHER: Here begins Tape No. 1 to the videotaped deposition of Scott Butler taken in matter of New England Compounding Pharmacy, Inc. product liability litigation. This deposition is being held at 315 Deaderick Street, Nashville, Tennessee 37238 on February 5th of 2015. The time is 9:03 a.m.

My name is Daniel Makowski. I'm the video technician. The court reporter today is B.J. Dugas. Would counsel please introduce yourselves for the record and state whom you represent, then the reporter will swear in the witness.

MR. NOLAN: George Nolan for the plaintiffs.

MR. CHALOS: Mark Chalos for the plaintiffs.

MR. STRANCH: Gerard Stranch for the plaintiffs.

MR. LEADER: Bill Leader for the plaintiffs.

MR. CLAYTON: Daniel Clayton for the

Page 8

plaintiffs.

MR. HOFFMAN: Eric Hoffman for the St. Thomas entities.

MS. HAMPTON: Amy Hampton for the St. Thomas entities.

MR. BLUMBERG: Jay Blumberg for the Premier defendants.

MS. CARRICK: Megan Carrick for Dr. Lister and Specialty Surgery Center.

MR. REHNQUIST: Jim Rehnquist, UniFirst.

MS. MACLEMAN: Kate MacLeman also for UniFirst.

MR. TARDIO: Christopher Tardio for the Tennessee clinic defendants.

MR. CLINE: Matt Cline for the Tennessee clinic defendants.

MR. GIDEON: And C.J. Gideon for Howell Allen, STOPNC and the witness, Scott Butler.

SCOTT ALEXANDER BUTLER, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. NOLAN:

Page 9

1 Q. Sir, would you please state your full name.
 2 A. My name is Scott Alexander Butler.
 3 Q. Mr. Butler, we're here to take your
 4 deposition today. You understand that you're under
 5 oath?
 6 A. Yes.
 7 Q. And that you have an obligation to tell the
 8 truth in response to all questions posed to you today,
 9 and that's the same obligation that you would have if
 10 you were sitting in a federal courtroom and the
 11 federal judge was sitting next to the witness stand.
 12 Do you understand that?
 13 A. Yes.
 14 Q. With that obligation in mind, would you be
 15 sure to make all of your answers full, truthful and
 16 complete?
 17 A. Yes.
 18 Q. If I ask you a question that you do not
 19 understand, will you let me know and I will try to ask
 20 a question that is more clear. Fair enough?
 21 A. Yes.
 22 Q. If I ask you a question and you give me an
 23 answer, I'm going to assume that you understood the
 24 question. Is that also fair?
 25 A. Yes.

Page 10

1 Q. I'm going to start by a few -- with a few
 2 questions about your background. I understand you're
 3 originally from Atlanta; is that correct?
 4 A. Correct.
 5 Q. And how long have you worked for the Howell
 6 Allen Clinic?
 7 A. Since 2005. Spring of 2005.
 8 Q. All right. Where did you go to college?
 9 A. I went to undergraduate at Samford
 10 University and graduate school at Auburn University.
 11 Q. And what degree did you obtain from
 12 Samford?
 13 A. A bachelor of science in business
 14 administration and then an MBA from Auburn.
 15 Q. Do you have any medical training?
 16 A. No.
 17 Q. When you began working for Howell Allen
 18 Clinic in 2005, what was your job?
 19 A. I was the controller, CFO.
 20 Q. What is your job now?
 21 A. Chief administrative officer. Really just
 22 the administrator for the practice.
 23 Q. When did you become the chief -- chief
 24 administrative officer for Howell Allen Clinic?
 25 A. 2007.

Page 11

1 Q. And what are your responsibilities as the
 2 chief administrative officer of the Howell Allen
 3 Clinic?
 4 A. Mainly just manage the business side of the
 5 practice.
 6 Q. What's included in that?
 7 A. Accounting, payroll, accounts payable,
 8 billing and collection and the overall -- the
 9 operations of the practice.
 10 Q. Do your responsibilities include public
 11 relations?
 12 A. Yes, they do.
 13 Q. Who do you report to?
 14 A. The board of Howell Allen Clinic.
 15 Q. And how would you describe the Howell Allen
 16 Clinic for someone who is unfamiliar with that entity?
 17 A. A group of neurosurgeons.
 18 Q. How many?
 19 A. Twelve.
 20 Q. How many employees does Howell Allen Clinic
 21 have?
 22 A. Approximately 125.
 23 Q. How many locations?
 24 A. Three main locations and about six
 25 satellite locations.

Page 12

1 Q. Where are the three main locations?
 2 A. St. Thomas Midtown, St. Thomas West and
 3 Skyline Hospital.
 4 Q. Now, it was on the campus of St. Thomas
 5 West where the epidural and ster -- epidural steroid
 6 injections were given that's the subject of this
 7 lawsuit; is that correct?
 8 A. Yes.
 9 Q. Where are the six satellite locations that
 10 you mentioned?
 11 A. Clarksville, Hopkinsville, Bowling Green,
 12 Summit, Columbia. How many is that? Is that six?
 13 Q. I wrote down five.
 14 A. Okay. And then Franklin.
 15 Q. Okay.
 16 A. And then one more, Columbia.
 17 Q. Thank you. Who is the president of Howell
 18 Allen Clinic?
 19 A. Greg Lanford.
 20 Q. He was the president back in 2011 and 2012;
 21 is that correct?
 22 A. Yes.
 23 Q. Do you hold any official titles with St.
 24 Thomas Outpatient Neurosurgical Center?
 25 A. I'm a board member.

Page 13

1 Q. How long have you been a board member?
 2 A. I think 2007.
 3 Q. Now, St. Thomas Outpatient Neurosurgical
 4 Center is somewhat of a mouthful, and here in the
 5 deposition today, I'm likely to refer to that entity
 6 as St. Thomas Neurosurgical. So if I do that, will
 7 you understand that I'm referring to St. Thomas
 8 Outpatient Neurosurgical Center?
 9 A. Okay.
 10 Q. Fair enough?
 11 And I also want to -- I meant to give you
 12 this earlier. This is a copy of a protective order
 13 that's been entered by the judge in this litigation.
 14 And the reason I'm giving it to you is because it's
 15 likely that you may be shown some information during
 16 the course of today's proceeding that was stamped
 17 "confidential" by the parties that are producing it.
 18 So you don't have to do it now, but at your
 19 convenience, I want you to read that and then I ask
 20 you to make sure you take it -- its requirements of
 21 confidentiality seriously. Fair enough?
 22 A. So you're just telling me the documents
 23 that I receive today that have "confidential" on them,
 24 I need to keep them confidential?
 25 Q. Right. You need to read the order and

Page 14

1 follow the order, but the primary purpose of the order
 2 is that you have to keep those confidential and can't
 3 use them beyond the confines of this litigation. Fair
 4 enough?
 5 A. Okay.
 6 Q. All right. Tell us what you know about the
 7 history of St. Thomas Neurosurgical.
 8 A. I know it was started in 2000 doing spine
 9 surgery and epidural steroid injections, and then in
 10 early 2005, all the spine surgery moved out of there
 11 and since 2005, it's been doing epidural steroid
 12 injection, pain blocks, various other procedures.
 13 Q. And approximately how many epidural steroid
 14 injections does St. Thomas Neurosurgical do in a year?
 15 A. Over the course of the last ten years, just
 16 an approximate?
 17 Q. Sure.
 18 A. I'd say between three and 4,000 would be my
 19 guess.
 20 Q. What about in 2012 and 2000 -- or rather
 21 let's say 2011? Do you have any idea as to
 22 approximately how many procedures -- epidural steroid
 23 injections were done that year?
 24 A. I think around 5,000.
 25 Q. And before the fungal meningitis outbreak,

Page 15

1 was St. Thomas Neurosurgical generally on pace to do a
 2 similar number of procedures in 2012?
 3 A. I'm not sure.
 4 Q. And is it true that St. Thomas
 5 Neurosurgical is a joint venture between Howell Allen
 6 Clinic and St. Thomas Hospital?
 7 MR. HOFFMAN: Objection to form.
 8 THE WITNESS: I'm not sure if it's
 9 St. Thomas Hospital or St. Thomas Health
 10 Services. I'm not sure how the -- I know
 11 that our side is Howell Allen Clinic, but
 12 I'm not sure who the official owner is on
 13 the -- on their side.
 14 Q. (By Mr. Nolan) All right. So you're not
 15 sure exactly which St. Thomas entity is the official
 16 owner of half of St. Thomas Neurosurgical; is that
 17 correct?
 18 A. Correct.
 19 Q. But is it true that St. Thomas
 20 Neurosurgical is a joint venture between Howell Allen
 21 Clinic and some St. Thomas entity?
 22 A. Yes.
 23 Q. All right. And generally, that joint
 24 venture functioned as a partnership between Howell
 25 Allen Clinic and St. Thomas for the 12 or 13 years

Page 16

1 before the fungal meningitis outbreak?
 2 MR. GIDEON: Objection to the form.
 3 Q. (By Mr. Nolan) You may answer.
 4 A. I'm not sure what you're asking.
 5 Q. Let me -- let me repeat the question.
 6 Am I correct in understanding that St.
 7 Thomas Neurosurgical is a joint venture between Howell
 8 Allen Clinic and St. Thomas, and that that joint
 9 venture functioned as a partnership between --
 10 MR. HOFFMAN: Objection to form.
 11 Q. (By Mr. Nolan) -- the two venturers for
 12 several years before the fungal meningitis outbreak?
 13 MR. GIDEON: And I repeat my
 14 objection to your characterization of it as
 15 a partnership.
 16 MR. NOLAN: Okay. Fair enough.
 17 Q. (By Mr. Nolan) You can go ahead and
 18 answer.
 19 A. I don't know that I would characterize it
 20 as a partnership. I'm not...
 21 Q. Isn't it true that --
 22 MR. GIDEON: Was he finished?
 23 Were you finished?
 24 THE WITNESS: Yes.
 25 Q. (By Mr. Nolan) Okay. Isn't it true,

Page 17

1 however, that at the time of the fungal meningitis
2 outbreak, you viewed it as functioning as a
3 partnership?

4 A. I'm not sure I would -- I would view it as
5 a joint venture between our group and St. Thomas.

6 Q. All right. And I appreciate that, but my
7 question was: Did you view that joint venture as
8 functioning as a partnership?

9 A. I'm not sure. I don't -- I don't remember.

10 Q. All right. So you have no memory of
11 whether -- as someone who is both an officer for
12 Howell Allen Clinic and on the board of St. Thomas
13 Neurosurgical, you don't remember whether you actually
14 viewed it as functioning as a partnership?

15 A. I'm saying I don't remember myself viewing
16 it as a partnership.

17 Q. All right. Do you know whether Dr. Lanford
18 viewed it as a partnership?

19 MR. GIDEON: Objection to the form.

20 THE WITNESS: I'm not sure.

21 Q. (By Mr. Nolan) Okay. Did you ever have
22 any reason to believe that Dr. Lanford viewed it as
23 functioning as a partnership?

24 A. I'm not sure.

25 MR. GIDEON: You can save copies for

Page 19

1 for Dr. Lanford understanding that Dr. Lanford would
2 then send a version of this e-mail to St. Thomas; is
3 that correct?

4 A. Correct.

5 Q. All right. And did you know who at St.
6 Thomas he planned to send the e-mail that you were
7 ghostwriting for him, so to speak?

8 A. Looks like Dawn Rudolph.

9 Q. All right. And she was the CEO of St.
10 Thomas Hospital; is that correct?

11 A. Yes.

12 Q. Okay. All right. And so here's what the
13 e-mail says. It says, "When this issue with tainted
14 steroids started back in September, our physicians and
15 staff at St. Thomas Hospital worked very closely to
16 coordinate patient care and communication. It was an
17 outstanding example of teamwork between partners."

18 All right. Now, what partners are you
19 referring to there?

20 A. I would assume my physicians and St.
21 Thomas.

22 Q. Okay. Would that include St. Thomas
23 Hospital and St. Thomas Health?

24 A. Yes.

25 Q. Okay. And then it says, "In our STOPNC

Page 18

1 us. Just give us the Bates number. Pass
2 the rest of them down.

3 (Exhibit 58 was marked for
4 identification.)

5 Q. (By Mr. Nolan) Let me hand you a document
6 which we'll make Exhibit No. 58. It's STOPNC number
7 6043. And I'm going to ask you if this is an e-mail
8 that you authored?

9 A. Yes.

10 Q. Okay. All right. And you sent it to Dr.
11 Lanford, the president of Howell Allen Clinic, as well
12 as several other physician owners of that clinic; is
13 that true?

14 A. Yes.

15 Q. All right. And why did you send this
16 e-mail to Dr. Lanford?

17 A. It appears that our group was concerned
18 that St. Thomas was separating themselves from us.

19 Q. And who is "us"?

20 A. From Howell Allen Clinic.

21 Q. Okay. Well, let's read this e-mail
22 together. First of all, this is an e-mail that
23 Dr. Lanford asked you to draft; is that correct?

24 A. Correct.

25 Q. All right. And so you wrote this e-mail

Page 20

1 emergency board meeting at St. Thomas, you made it
2 very clear that you wanted to be the buffalo in this
3 event and brave the storms ahead together. Our group
4 felt like we were on the same page in making sure that
5 the patients were the top priority for all of us in
6 the joint venture at STOPNC."

7 Did I read those sentences correctly?

8 A. Yes.

9 Q. All right. Then it says, "However, over
10 the last couple of weeks, it has become evident that
11 your goal is to separate yourself from our group and
12 the joint venture by informing all media that this
13 surgery center was independent and unaffiliated with
14 St. Thomas Hospital. In the Tennessean, writer Josh
15 Rogers e-mailed us and said, 'St. Thomas is trying to
16 distance themselves from you even though their name is
17 on the corporation documents saying that you are
18 independent, end quote. In Health Leaders magazine,
19 it was stated that STOPNC was, quote, not affiliated
20 with the hospital, close quote, and, quote,
21 unaffiliated clinic, close quote, and, quote,
22 similarly named, but unaffiliated clinic, close quote.

23 Our group has never considered this joint
24 venture to be anything other than a partnership
25 between St. Thomas Hospital and Howell Allen Clinic.

1 That's how it began and that's how it has functioned
2 over the last 13 years."

3 Have I read those sentences correctly?

4 A. Yes.

5 Q. Is the material and the words that you
6 wrote for Dr. Lanford, are those words true?

7 A. I'm not sure what you mean by are they
8 true.

9 Q. Are you unfamiliar with that term?

10 A. I'm just not sure what -- are you -- if
11 you're saying that the document is -- how you read it
12 is how I typed it, then, yes. I'm not sure what
13 you're asking me --

14 Q. Well --

15 A. -- is true or not.

16 Q. When you were writing this at Dr. Lanford's
17 request, did you endeavor to make sure that the
18 verbiage you selected was truthful?

19 A. I guess I would say I'm not -- I'm not sure
20 that I would say truthful. I would say that this is
21 my opinion on the situation.

22 Q. All right. That was your honest opinion at
23 the time; correct?

24 A. Correct.

25 Q. All right. Now, the sentence that begins,

1 "Our group," which we've already read. "Our group had
2 never considered this joint venture to be anything
3 other than a partnership between St. Thomas Hospital
4 and Howell Allen Clinic," who is "our group"?

5 A. Howell Allen Clinic.

6 Q. All right. And then when you say, "That's
7 how it began." Are you referring to -- is "it" St.
8 Thomas Neurosurgical?

9 A. Yes.

10 Q. Okay. And it says, "That's how it began
11 and that's how it has functioned over the last
12 13 years." "It" is still St. Thomas Neurosurgical;
13 correct?

14 A. Yes.

15 Q. All right. And then continuing on, it
16 says, "The management of the facility has shared
17 responsibilities between our group and your hospital.
18 Until your arrival, the administrator at St. Thomas
19 Hospital has always been on the board at STOPNC."

20 Did I read that correctly?

21 A. Yes.

22 Q. All right. And then it says, "The Howell
23 Allen Clinic has had a long -- a very long and
24 successful partnership with St. Thomas Hospital."

25 Did I read that correctly?

1 A. Yes.

2 Q. What partnership are you referring to?

3 A. I think if I was -- going back and looking
4 at it, I think I would say that that partnership to me
5 could probably be replaced with relationship, really
6 referring to our relationship with St. Thomas
7 Hospital. That our physicians had been at St. Thomas
8 Hospital for roughly 40 years in some form or fashion.

9 Q. Did Dr. Lanford eventually send this e-mail
10 to Dawn Rudolph?

11 A. I believe so, but I'm not sure.

12 Q. Can you tell me how the name St. Thomas
13 Neurosurgical was selected.

14 A. I don't know.

15 Q. Do you know who chose that name?

16 A. I don't know.

17 Q. Do you know why that entity has continued
18 to use that name since you've been there?

19 A. I think that was the name that it was
20 started with and there's just never been any
21 initiative to change it.

22 Q. Do you think that St. Thomas Surgical, by
23 using the St. Thomas name, has benefited from that?

24 A. No, I don't think so.

25 Q. All right. And if we look at the e-mail,

1 at the bottom is Dr. Lanford's e-mail to you asking
2 you to draft an e-mail for Dawn. Dawn Rudolph;
3 correct?

4 A. Correct.

5 Q. And he suggested that you send a copy -- or
6 he intended to send a copy of the e-mail apparently to
7 MS. Does that stand for Mike Schatzlein?

8 A. I would think so.

9 Q. And Mike Schatzlein at that point in time
10 was the president and CEO of St. Thomas Health?

11 A. I think so.

12 Q. All right. But is Mr. Schatzlein a
13 physician?

14 A. Yes.

15 Q. Okay. So Dr. Schatzlein was not on the
16 board of St. Thomas Neurosurgical; is that correct?

17 A. Correct.

18 Q. Was Ms. Rudolph on the board?

19 A. I believe at that time she was on the
20 board.

21 Q. And for what purpose did Howell Allen and
22 St. Thomas come together and form St. Thomas
23 Neurosurgical?

24 A. I'm not sure. I wasn't -- I wasn't there
25 at the time.

1 Q. Well, what is your understanding of the
2 purpose that St. Thomas and Howell Allen Clinic had
3 operated St. Thomas Surgical since you were involved
4 beginning in 2007?

5 A. Since I've been involved, it's been
6 operating as a surgery center that does epidural
7 steroid injections, blocks.

8 Q. Okay. And as I understand it, the
9 ownership of that entity is shared equally between St.
10 Thomas and Howell Allen Clinic; is that correct?

11 A. Yes.

12 Q. But the profits from that entity are
13 distributed equally; is that correct?

14 A. Yes.

15 Q. And it is a for-profit entity?

16 A. Yes.

17 Q. And the profits are calculated after
18 expenses are paid; is that correct?

19 A. Yes.

20 Q. So that expenses are likewise shared
21 between the venturers; is that true?

22 A. Yes.

23 Q. And at the time of the meningitis outbreak,
24 who were the St. Thomas Neurosurgical board members?

25 A. Myself, Greg Lanford, Dale Batchelor and

1 CFO.

2 Q. Do you know whether that was a -- either
3 St. Thomas Hospital or St. Thomas Health?

4 A. I'm not sure if that was -- I'm not sure.

5 Q. And you were here during Ms. Schamberg's
6 deposition yesterday?

7 A. Yes.

8 Q. And you heard her indicate that she reports
9 to the board; correct?

10 A. Correct.

11 Q. Okay. And would I be correct in
12 understanding that if you as a board member gave a
13 directive to Ms. Schamberg, you would expect her to
14 follow that directive?

15 A. Yes.

16 Q. Would I be correct in understanding that if
17 Dr. Bachelor gave Ms. Schamberg a directive as a board
18 member of St. Thomas Neurosurgical, you would expect
19 her to follow that directive?

20 A. Yes.

21 Q. And would the same be true for Dr.
22 Culclasure?

23 A. If he gave her a directive, would she be
24 responsible for following it?

25 Q. Yes.

1 Dawn Rudolph.

2 Q. All right.

3 A. I'm not sure if Dawn or Alan Strauss was
4 the -- we didn't -- we don't have any control over the
5 St. Thomas board side, and their side changed -- has
6 changed over the last seven and a half years since
7 I've been there. So I'm not sure who --

8 Q. All right.

9 A. -- the -- it was two of those three I'm --
10 I'm pretty sure of that.

11 Q. Okay. All right. And so you -- Howell
12 Allen didn't have any control over who St. Thomas
13 selected to be its representatives on the board;
14 correct?

15 A. Correct.

16 Q. All right. And so we know who you are. We
17 know who Dr. Lanford is. Dale Batchelor was the chief
18 medical officer for St. Thomas Hospital; is that
19 correct?

20 A. Yes.

21 Q. And Dawn Rudolph was the CEO of St. Thomas
22 Hospital; correct?

23 A. Yes.

24 Q. And what position did Alan Strauss hold?

25 A. I believe he was the CFO of -- he was the

1 A. I think depending on what -- what it is,
2 yes.

3 Q. And what was the purpose for having
4 representatives of St. Thomas on the St. Thomas
5 Neurosurgical board?

6 A. Because they own 50 percent of the -- of
7 the surgery center.

8 Q. Okay. Would I be correct in understanding
9 that both Howell Allen Clinic and St. Thomas -- and
10 St. Thomas had an equal right to control St. Thomas
11 Neurosurgical because their representation on the
12 board was equal?

13 MR. HOFFMAN: Objection to form.

14 THE WITNESS: I'm not sure what
15 you're asking.

16 Q. (By Mr. Nolan) Sure. The board
17 representation for Howell Allen and St. Thomas was
18 equal, each side had two members on the board for a
19 total of four; is that correct?

20 A. Yes.

21 Q. All right. So both members of the joint
22 venture had equal control as far as the venture itself
23 was concerned. You'll agree with that?

24 A. Yes.

25 Q. Let's look back at the e-mail, which is

1 Exhibit 58. And in the last paragraph of your e-mail,
2 you see the sentence that begins, "We hope that your
3 decision to remain, quote, unaffiliated during this
4 crisis is not a sign of the decline of our
5 partnership."

6 Do you see that?

7 A. Yes.

8 Q. And then it says, "At the Howell Allen
9 Clinic, we remain fiercely loyal to St. Thomas
10 Hospital and our affiliation and dependence on you is
11 reflected in our excellence in patient care that
12 hasn't changed over -- in over 30 years."

13 Did I read that correctly?

14 A. Yes.

15 Q. And what does "affiliation and dependence
16 on you" mean?

17 A. On the affiliation side, obviously our
18 ownership of a surgery center and then our physicians
19 that covered all the neurosurgery for St. Thomas
20 Hospital would be what I would be referring to.

21 Q. All right. So that's the affiliation side.
22 What about dependence? What does that mean?

23 A. I think the dependence would be that we
24 depend on St. Thomas Hospital. That's where we take
25 care of patients for our group and in their hospital.

1 St. Thomas network?

2 A. I think that goes back to the question you
3 asked earlier. I'm not sure who the official owner
4 is.

5 Q. Okay. Let me ask you to assume that the
6 operating agreement for St. Thomas Neurosurgical is,
7 in fact, set up that way, it shows St. Thomas network
8 is owning half of the company. But I'd also like you
9 to assume that that -- that entity, St. Thomas
10 network, has zero employees. Do you know why it is
11 that it was set up such that at least on paper, half
12 of the ownership of St. Thomas Neurosurgical would
13 reside in an entity with zero employees?

14 MR. HOFFMAN: Objection to form.

15 THE WITNESS: No.

16 Q. (By Mr. Nolan) Okay. And I take it, then,
17 that the people who actually served on the board of
18 St. Thomas -- St. Thomas Neurosurgical since you've
19 been there have been either employees of St. Thomas
20 Hospital or employees of St. Thomas Health; is that
21 correct?

22 A. Yes.

23 Q. All right. And then the next paragraph of
24 our article says, "Originally the center handling both
25 spinal surgery and epidural steroid injections" --

1 (Exhibit 59 was marked for
2 identification.)

3 Q. (By Mr. Nolan) Let me hand you a document
4 that we're going to make Exhibit No. 59. And it is
5 a -- it's a newspaper article that you were quoted in
6 from the Tennessean. And I want to ask you if you
7 read this article when it was published.

8 A. I'm sure I did read it when it was
9 published.

10 Q. Okay. Do you recall giving an interview to
11 the Tennessean, a writer named Josh Brown?

12 A. Yes.

13 Q. And at the bottom of the first page, you
14 talk about the center. Is that St. Thomas
15 Neurosurgical?

16 A. Yes.

17 Q. All right. And you say, "The center
18 started 12 years ago as a joint venture between St.
19 Thomas network, the parent corporation of St. Thomas
20 Hospital, and Howell Allen Clinic, a local group of
21 neurosurgeons."

22 Did you tell Mr. Brown that?

23 A. Yes.

24 Q. Okay. Now, is it your understanding that
25 ownership of half of the clinic is re -- resides in

1 excuse me. I messed that up. Let me start over.

2 "Originally, the center handled both spinal
3 surgery and epidural steroid injections. Since 2005,
4 it has focused exclusively on pain management and
5 gives roughly 500 -- 5,000 epidural steroid injections
6 a year, Butler said."

7 Did you -- did you represent that to
8 Mr. Brown?

9 A. Yes.

10 Q. And did you give your interview to
11 Mr. Brown in your capacity as a board member of St.
12 Thomas Neurosurgical?

13 A. I'm not sure if I -- I'm not sure if I did
14 it as a board member or as a -- as the administrator
15 of Howell Allen Clinic. I mean, I guess it's one and
16 the same, but --

17 Q. Okay. Fair enough. And what is the date
18 of -- that this article was published?

19 A. October 17th, 2012.

20 Q. Okay. Let me hand you a document that was
21 produced to us that we're going to make Exhibit
22 No. 60, and it is STOPNC_11563. Now, this is a letter
23 on St. Thomas Health letterhead dated the same date as
24 the -- as the article that was published in the
25 Tennessean?

1 (Exhibit 60 was marked for
2 identification.)
3 MR. GIDEON: That must be the wrong
4 document, 11563, 011563.
5 Q. (By Mr. Nolan) So this appears to be a
6 letter on St. Thomas Health letterhead that was
7 actually apparently sent the same day as the
8 Tennessean article; correct?
9 A. Yes.
10 Q. Okay. And it's a letter from someone named
11 Cynthia Figaro, who identifies herself as vice
12 president of corporate responsibility program. Do you
13 see that?
14 A. Yes.
15 Q. And it's to a woman named Shreka Rogers.
16 Do you know Ms. Rogers?
17 A. Yes.
18 Q. And who does she work for?
19 A. She's the billing manager for Howell Allen.
20 Q. Okay. And the letter indicates that she's
21 the coding and compliance manager for St. Thomas
22 Neurosurgical. Do you see that?
23 A. Yes.
24 Q. Does she also serve that function?
25 A. No. She's the -- she's our billing manager

1 and since we manage the facility, she manages the
2 billing.
3 Q. Okay.
4 A. I don't -- I've never seen her referred to
5 as the coding and compliance manager.
6 Q. Okay. And this is what she says in the
7 first sentence. "St. Thomas Health is a partner with
8 your company in the St. Thomas Outpatient Neurological
9 Center, LLC joint venture."
10 Did I read that correctly?
11 A. Yes.
12 Q. Is that referring to what you call STOPNC
13 and I call St. Thomas Neurosurgical?
14 A. Yes.
15 Q. Okay. Were you aware that St. Thomas
16 Health was referring to itself as a partner with your
17 company?
18 A. No. I've never seen this letter.
19 Q. Do you know -- I mean, how do you interpret
20 the phrase "your company"? Who is "your company"?
21 A. I would assume Howell Allen.
22 Q. Is it true that because Howell Allen and
23 St. Thomas were so bound together in this joint
24 venture that functioned as a partnership that you took
25 it upon yourself after the outbreak to influence the

1 hospital's PR moves?
2 MR. HOFFMAN: Objection to form.
3 MR. GIDEON: Objection to the form.
4 THE WITNESS: No.
5 Q. (By Mr. Nolan) Did you take it upon
6 yourself to influence the hospital's PR moves?
7 A. No.
8 Q. Why not?
9 A. Why did I not try to influence their PR
10 moves?
11 Q. Yeah. Why not?
12 A. I think because I feel like I don't have
13 any control over their PR department.
14 (Exhibit 61 was marked for
15 identification.)
16 Q. (By Mr. Nolan) Let me hand you an e-mail
17 that we'll make Exhibit No. 61. And this is at St.
18 Thomas entities 014181. And let me ask you if you've
19 seen this before?
20 MR. GIDEON: Let me see the document
21 number -- the Bates number again.
22 Q. (By Mr. Nolan) You've seen this before.
23 This is an e-mail from you to Dawn Rudolph; is that
24 correct?
25 A. Yes.

1 Q. And it's an e-mail that you sent on October
2 the 9th, 2012; is that right?
3 A. Yes.
4 Q. And the subject is "Two things"; is that
5 correct?
6 A. Yes.
7 Q. Could you read into the record the two
8 things that you e-mailed to Ms. Rudolph.
9 A. "No. 1, our group would like to buy lunch
10 for the ER staff tomorrow. Who can I talk to about
11 coordinating this effort? No. 2, Standard has a great
12 idea. He would like for St. Thomas to have a day of
13 prayer for the patients and families affected by the
14 meningitis outbreak. Good PR move."
15 Q. Now, Standard refers to Dr. Standard; is
16 that correct?
17 A. Yes.
18 Q. And is he one of the owners of Howell Allen
19 Clinic?
20 A. Yes.
21 Q. And when did you decide that having St.
22 Thomas organize a day of prayer for the patients and
23 families affected by the meningitis outbreak would be
24 a good PR move?
25 A. I assume when I sent the e-mail.

Page 37

Page 39

1 Q. Okay. And so did you talk with Dr.
2 Standard about the fact that that would be a good PR
3 move?

4 A. No, I think me and Dr. Standard talked
5 about it as a way to come together as a family, as a
6 Christian and pray for the families affected by the
7 outbreak.

8 Q. Okay. And so the notion that it would be a
9 good PR move originated with you; is that correct?

10 A. Correct.

11 Q. All right. And how did Ms. Rudolph react
12 to your suggestion?

13 A. I'm not sure.

14 Q. All right. Let's look at the next page and
15 let me ask you if that contains Ms. Rudolph's initial
16 response?

17 A. Yes.

18 Q. Okay. And so suggestion No. 1 about buying
19 lunch for the ER staff, she apparently gave you the
20 phone number of someone you could talk to about that;
21 correct?

22 A. Correct.

23 Q. And she indicated that she was working on
24 your second suggestion about the day of prayer;
25 correct?

1 prayer would be a good PR move for?

2 A. I think for everybody involved.

3 Q. And is that because -- because you
4 recognize that St. Thomas Neurosurgical's problem was
5 both Howell Allen Clinic's problem as well as St.
6 Thomas Hospital and St. Thomas Health's problem?

7 A. No, I think -- I think I saw it as an
8 emotional time for a lot of different people. I had
9 friends of mine that were affected by this, employees
10 affected by this, physicians affected by this and it
11 was an emotional time that I felt like it would -- it
12 seemed like everything was disconnected at the time
13 and I wanted everybody to get together and focus on
14 taking care of these people that were affected. It
15 was an emotional whirlwind at that time.

16 Q. At any point did anyone indicate to any of
17 the patients or families that -- that Howell Allen
18 Clinic and St. Thomas Hospital were collaborating on a
19 day of prayer for PR purposes?

20 MR. HOFFMAN: Objection to form.

21 THE WITNESS: I don't think so, no.

22 Q. (By Mr. Nolan) And after this outbreak
23 occurred, did you recognize that because Howell Allen
24 Clinic and St. Thomas were in a joint venture and
25 because St. Thomas Surgical -- Neurosurgical was an

Page 38

Page 40

1 A. Correct.

2 Q. And did it happen? Was there a day of
3 prayer organized?

4 A. I don't remember.

5 Q. Okay. Do you know whether St. Thomas
6 Health or St. Thomas Hospital began collaborating with
7 an outside PR firm about organizing a day of prayer?

8 A. I don't know.

9 Q. Okay. Do you have any recollection of any
10 of the surgeons at Howell Allen Clinic, such as Dr.
11 Standard, for example, attending a day of prayer?

12 A. I don't know.

13 Q. So you made no effort to follow up on this
14 suggestion that -- that you and Dr. Standard had made;
15 is that correct?

16 A. I don't remember if I followed up on it.

17 Q. If there had been a day of prayer, is that
18 something that you would likely have attended?

19 A. Yes.

20 Q. And if you had attended a day of prayer for
21 the families and their victims, wouldn't you expect to
22 remember that?

23 A. I said that I didn't attend a day of
24 prayer.

25 Q. And who did you anticipate the day of

1 agent of those venturers, that Howell Allen and St.
2 Thomas were in this thing together and needed to stick
3 together during the aftermath of the outbreak?

4 MR. HOFFMAN: Objection.

5 Q. (By Mr. Nolan) Is that true?

6 MR. GIDEON: I object -- object to
7 the form to all four or five of the
8 component parts of that question.

9 Q. (By Mr. Nolan) You can answer.

10 A. If you could, I guess, consolidate that
11 down to the question.

12 Q. Sure. I'll try to rephrase it.

13 MR. GIDEON: Without the long wind
14 up.

15 MR. NOLAN: I'll do the best I can.

16 Q. (By Mr. Nolan) Is it true that -- that
17 after the outbreak, you decided that Howell Allen
18 Clinic and St. Thomas should stick together in the
19 aftermath of the outbreak?

20 A. Yes.

21 Q. And you made that decision because you knew
22 that Howell Allen and St. Thomas were in this joint
23 venture together that you described in the e-mail as
24 being a partnership and that's why you needed to stick
25 together; is that true?

1 A. I think it was less about the partnership
2 and the joint venture than it was about taking care of
3 everybody that was involved with it because it was --
4 affected a lot of people and was important for all --
5 all of us to be together.

6 Q. Did you collaborate with St. Thomas
7 regarding efforts to protect the collective
8 reputations of Howell Allen and St. Thomas in the
9 aftermath of the outbreak?

10 MR. HOFFMAN: Form.

11 THE WITNESS: I think I was focused
12 on Howell Allen.

13 Q. (By Mr. Nolan) And did you recognize that
14 Howell Allen's -- I mean that St. Thomas
15 Neurosurgical's problem was Howell Allen's problem in
16 the aftermath of the outbreak?

17 A. Yes.

18 Q. And why did you view St. Thomas
19 Neurosurgical's problem to be Howell Allen's problem?

20 A. I think mainly because all those patients
21 were our patients that we took care of and that was
22 why I felt like it was our problem.

23 Q. Okay. Did you likewise recognize that St.
24 Thomas Neurosurgical's problem was St. Thomas's
25 problem regardless of whether we're talking about

1 patient to go to the closest ER, but we just wanted
2 them to get to an ER as soon as possible, and I think
3 St. Thomas was staffingwise preparing for it. I think
4 one of the issues -- this is just me -- I don't recall
5 any facts on this, I just remember that it was a time
6 where you had to have enough people because it was
7 basically sending potentially a thousand people to an
8 ER and most ERs aren't prepared for that.

9 So we were trying to direct everybody to
10 one location if we could. I mean, we wanted them to
11 go to the closest ER they could get to. If they could
12 get to St. Thomas that was better because we were
13 ready for it.

14 Q. Would I be correct in thinking that the
15 only emergency room that St. Thomas Neurosurgical
16 referred patients by name was St. Thomas Hospital's
17 ER?

18 A. Yes.

19 Q. Now, if we look back at the -- your e-mail
20 which is Exhibit 58, the one you wrote for
21 Dr. Lanford, I believe you indicated that Howell Allen
22 was frustrated by the way it perceived St. Thomas
23 Hospital to be attempting to distance itself from
24 Howell Allen; is that fair?

25 A. Yes.

1 Hospital or Health or network?

2 A. Yes.

3 Q. All right. And why did you feel that St.
4 Thomas Neurosurgical's problem was also the problem of
5 the St. Thomas entities?

6 A. I think mainly because the way we try to
7 take care of patients was to direct all of them to St.
8 Thomas Hospital for our group to take care of, and I
9 think that was -- I mean, you saw from the e-mail
10 about sending lunch to the ER staff where the ER was
11 seeing -- I believe they saw over 300 patients in a
12 week and it was overwhelming a lot of different people
13 at St. Thomas.

14 Q. Okay. And why did St. Thomas -- was it St.
15 Thomas Neurosurgical that directed the patients to go
16 to St. Thomas Hospital if they had any problems?

17 A. Yes.

18 Q. And why did St. Thomas Neurosurgical do
19 that?

20 A. Because we didn't have an ER staff to take
21 care of the patients.

22 Q. And why did St. Thomas Neurosurgical not
23 send the patients to Centennial Medical Center or
24 Vanderbilt University Medical Center, for example?

25 A. I mean, I think our idea was for the

1 Q. And you also indicated that St. Thomas
2 Hospital was attempting to distance itself from St.
3 Thomas Neurosurgical; correct?

4 A. Yes.

5 Q. Okay. And it was frustrating that St.
6 Thomas Hospital was attempting to distance itself from
7 St. Thomas Neurosurgical; correct?

8 A. Yes.

9 Q. And why was it frustrating?

10 A. I think because, you know, our relationship
11 with them that we were -- we both owned 50 percent of
12 the facility and that was the frustration with it.

13 Q. Okay. Would it be fair for me to think
14 that you and Dr. Lanford did not think it was very
15 fair for the hospital to be trying to distance itself
16 from St. Thomas Neurosurgical?

17 A. For myself, yes.

18 Q. Okay. Now, did Howell Allen Clinic do
19 anything to try and distance itself from St. Thomas
20 Neurosurgical?

21 A. No.

22 Q. At any point, did Howell Allen Clinic
23 remove references to St. Thomas Neurosurgical from its
24 website?

25 A. Yes.

Page 45

Page 47

Q. Was that before or after the outbreak?

A. After.

Q. And why did that happen?

A. The main reason we did that was that we were running into a problem where I believe some attorneys had put our e-mail address -- or our web address on the Internet and we had patients calling our staff wanting information about STOPNC. And so my plan was to try to make it easier for the patients to get the information. Because they're calling our physician secretaries who didn't know a lot of details about how to treat it or what to do with it other than to send them to an ER.

And so what I was trying to do was to -- I instructed our staff, our IT people to put a big red bullet on the top of our website to say "If you've had an injection, go to this site," and it went to a STOPNC site that had all of the information that I felt the patients needed to see. I was really worried about the patient getting lost in our website that has all of our physician bios, all of our spine surgery information, all that kind of information on there.

Q. All right. So to make sure I'm clear about what specifically happened, am I correct in understanding that on Howell Allen's website, there

Do you recognize that as being something from Howell Allen's website before the outbreak?

A. I don't, but it sounds like you're reading it from the site, so...

Q. Okay. And is that the type of thing that was -- would have also been removed at your direction?

A. Yes.

Q. Okay. And so then after the outbreak -- and let me just hand you as Exhibit No. 62 and ask you if there's -- this appears to be a page from -- from Howell Allen's website before the outbreak.

(Exhibit 62 was marked for identification.)

THE WITNESS: Appears to be, yes.

Q. (By Mr. Nolan) All right. And let me hand you as Exhibit No. 63 something that I'll ask you if this appears to be another page from Howell Allen's website as it would have existed before the outbreak.

(Exhibit 63 was marked for identification.)

THE WITNESS: Yes.

Q. (By Mr. Nolan) Okay. Let me hand you as Exhibit No. 64 something that I'll ask you if it appears to be a list of Howell Allen's locations after the outbreak, and this list does not include St.

Page 46

Page 48

was a list of the various locations that Howell Allen had; correct?

A. Correct.

Q. And before the outbreak, that list did specifically mention St. Thomas Outpatient Neurosurgical Center located at the St. Thomas Hospital campus; correct?

A. Correct.

Q. All right. And then after the outbreak, that location reference was removed from Howell Allen's website; is that true?

A. Right. Correct.

Q. And that was done at your direction; is that correct?

A. Yes.

Q. And did you confer with Dr. Lanford or anyone else before you had that removed from the website?

A. I don't remember.

Q. Okay. And then am I also correct that Howell Allen's website before the outbreak said, quote, Howell Allen's -- with an apostrophe S -- St. Thomas Outpatient Neurosurgical Center provides efficient and professional ambulatory care to have you in, out and on your way to recovery in no time.

Thomas Neurosurgical; is that correct?

(Exhibit 64 was marked for identification.)

THE WITNESS: Correct.

Q. (By Mr. Nolan) Is St. Thomas Neurosurgical currently listed as St. Thomas -- on Howell Allen's website?

A. No.

Q. And why not?

A. It's funny you should ask that because Matt asked me the same question yesterday and I didn't realize. What happened was when we took it off the website, we took it off the website when it was closed, when STOPNC was closed, you know. We closed for a long time. And then when it opened back up, I guess we never -- like, Matt asked me if it was on the website and I said, yeah, it's on the website and we looked it up and the location wasn't on there.

So, yeah, I told Matt yesterday, I said, I've got to get our guys back on that because it's -- it's -- it was never changed. I don't think it was ever changed from when we took it off, you know, two years ago.

Q. Okay. And who is your IT person? Who did Howell Allen use to make these changes on its website?

1 A. Nathan Anderson.
2 Q. Okay. And did you ever direct Mr. Anderson
3 to set up a separate website for St. Thomas
4 Neurosurgical?
5 A. Yes. That's what I said a minute ago.
6 Q. Okay. And does St. Thomas Neurosurgical
7 currently maintain a separate website?
8 A. I don't think so.
9 Q. All right.
10 A. I thought we had shut that down.
11 Q. All right. And approximately when did you
12 shut that website down?
13 A. I'm not sure.
14 Q. Why did you shut it down?
15 A. Because I think I felt that we were out of
16 the window of patients being sick and having
17 questions.
18 Q. And where is the website that was -- that
19 previously existed for St. Thomas Neurosurgical?
20 A. The new one that we -- the new one that we
21 started that had the meningitis information on it?
22 Q. Right.
23 A. Where is it?
24 Q. Yes, where is it? Is there a copy of it
25 somewhere if we wanted to look at it?

1 A. I don't --
2 Q. Was that preserved?
3 A. I have -- I have -- I have no earthly -- I
4 really don't have any idea.
5 MR. GIDEON: You need to let him
6 finish his question before you --
7 THE WITNESS: Okay.
8 MR. GIDEON: -- begin answering it.
9 THE WITNESS: Okay.
10 Q. (By Mr. Nolan) Do you think it's
11 reasonable for patients to expect that if they go to a
12 facility bearing the St. Thomas name that any drugs
13 that they would receive at that facility would be
14 safe?
15 A. Yes.
16 Q. And why do you think it would be reasonable
17 for patients to expect that?
18 A. To come to our facility and expect things
19 to be safe?
20 Q. Yeah. If a patient goes to a facility with
21 the St. Thomas name, why do you think it would be
22 reasonable for those patients to expect any drugs that
23 they receive there to be safe?
24 A. I don't know that I can answer based on the
25 St. Thomas name. I think I can answer based on

1 STOPNC, that -- is that the same question?
2 Q. Well, why don't you answer it for St.
3 Thomas Neurosurgical, then.
4 A. Because I think our staff would make their
5 best efforts to make sure that whatever we provide for
6 the patient would be safe.
7 Q. All right. And so you were here yesterday
8 during Debra Schamberg's deposition; correct?
9 A. Correct.
10 Q. So you listened to her testify about her
11 role in St. Thomas Neurosurgical's decision to
12 purchase medicines from New England Compounding
13 Center; correct?
14 A. Correct.
15 Q. And as a board member of St. Thomas
16 Neurosurgical, were you satisfied with the information
17 she shared with us yesterday?
18 A. Yes.
19 Q. Was there anything that you thought to
20 yourself, I wish Ms. Schamberg had done that
21 differently?
22 A. In the deposition?
23 Q. Yeah.
24 A. No.
25 Q. So as you listened to her testify, there

1 were -- there was at no point when she described her
2 actions that you thought, I wish she had done that
3 differently; is that correct?
4 A. There was never a point that I thought she
5 should have done anything differently.
6 Q. And what was the URL of the St. Thomas
7 Neurosurgical website that was set up immediately
8 after the outbreak?
9 A. I have no idea.
10 Q. Do you agree that St. Thomas Neurosurgical
11 is both part of Howell Allen Clinic and part of St.
12 Thomas?
13 MR. GIDEON: Objection to the form.
14 MR. HOFFMAN: Objection to form.
15 Q. (By Mr. Nolan) You can answer.
16 A. No.
17 Q. Do you agree that St. Thomas Neurosurgical
18 is part of Howell Allen Clinic?
19 A. I think STOPNC is a joint venture of Howell
20 Allen's.
21 Q. And who else?
22 A. One of the St. Thomas entities. I've heard
23 several different names today, so I'll just say that.
24 I think that's the easiest answer.
25 (Exhibit 65 was marked for

Page 53

Page 55

1 identification.)
 2 Q. (By Mr. Nolan) Let me hand you a document
 3 we'll make Exhibit No. 65, and it's found at
 4 STOPNC_0256 it's titled "St. Thomas Outpatient
 5 Neurosurgical Center infection prevention and control
 6 plan." Does this appear to be part of St. Thomas
 7 Neurosurgical's policies and procedures?
 8 A. Appears to be.
 9 Q. Okay.
 10 MR. GIDEON: May I see the document?
 11 Q. (By Mr. Nolan) And the first sentence
 12 reads, "St. Thomas Outpatient Neurosurgical Center is
 13 an ambulatory care center that is part of the Howell
 14 Allen Clinic specialty clinic treating disorders of
 15 the brain and spine."
 16 Have I read that correctly?
 17 A. Yes.
 18 Q. Is that a true statement?
 19 A. No.
 20 Q. And why do you say no?
 21 A. Because I think that anything that's part
 22 of the Howell Allen Clinic is something that we would
 23 own exclusively, not something that would be a joint
 24 venture between two parties.
 25 Q. All right. Now, I understand that Dr. John

1 Culclasure?
 2 MR. HOFFMAN: Objection to form.
 3 THE WITNESS: I don't think so. I
 4 think as an employee of Howell Allen,
 5 Howell Allen has supervisory -- is the
 6 supervisor of Dr. Culclasure.
 7 Q. (By Mr. Nolan) But you would agree that if
 8 the St. Thomas board wanted to make a change in the
 9 medical director of St. Thomas Neurosurgical, the
 10 board had the power to do that?
 11 MR. HOFFMAN: Objection to form.
 12 Q. (By Mr. Nolan) Would you agree?
 13 A. I'm not sure how that is written in the
 14 operating agreement. I'm not sure if Howell Allen
 15 appoints the medical director. I'm not sure how
 16 that's legally decided.
 17 Q. Okay.
 18 A. It's never been an issue since I've been
 19 there.
 20 Q. All right. Fair enough.
 21 MR. GIDEON: George, when you get to
 22 a point that you're comfortable stopping, I
 23 want to take a bathroom break for about
 24 five to ten minutes.
 25 MR. NOLAN: Let's go ahead and do it.

Page 54

Page 56

1 Culclasure is the medical director of St. Thomas
 2 Neurosurgical; correct?
 3 A. Correct.
 4 Q. He was at the time of the outbreak; true?
 5 A. True.
 6 Q. He also was an employee of Howell Allen
 7 Clinic; is that correct?
 8 A. Yes.
 9 Q. And what were his responsibilities as an
 10 employee of Howell Allen Clinic?
 11 A. To take care of patients referred to him
 12 from within our group for pain management, epidural
 13 steroid injections, kyphoplasty, several different
 14 interventional pain procedures that he does to take
 15 care of our patients.
 16 Q. Okay. But in doing that, did he report to
 17 the St. Thomas Neurosurgical board?
 18 A. You mean, like, who is his supervisor?
 19 Q. Right.
 20 A. I would say Greg Lanford would be his -- I
 21 would -- I would think -- if there's a problem with
 22 John, it would have -- it would be directed to Greg
 23 before it would be to the St. Thomas board.
 24 Q. Okay. All right. But ultimately would the
 25 St. Thomas board have supervisory authority over Dr.

1 MR. GIDEON: Should we do it --
 2 suspend make it short, five minutes --
 3 MR. NOLAN: That sounds good.
 4 MR. GIDEON: -- in that time frame?
 5 VIDEOGRAPHER: This is the end of
 6 Tape No. 1. We're off the record and the
 7 time is 10:15 a.m.
 8 (A recess was taken.)
 9 VIDEOGRAPHER: Here begins Tape No. 2
 10 in the deposition of Scott Butler. We're
 11 back on the record and the time is
 12 10:24 a.m.
 13 Q. (By Mr. Nolan) Mr. Butler, can you explain
 14 to us how Dr. Culclasure -- how his performance is
 15 evaluated.
 16 A. I think mainly just based on outcomes and
 17 patient satisfaction.
 18 Q. Okay. And I'm not going to ask you what
 19 he's paid, but can you tell us how his compensation is
 20 determined.
 21 A. He gets paid a percentage of collections.
 22 Q. Okay. So the more -- the more epidural
 23 steroid injections that are performed at St. Thomas
 24 Neurosurgical, the more Dr. Culclasure gets paid; is
 25 that correct?

Page 57

Page 59

1 A. The more work he does, the more he gets
2 paid.

3 Q. Okay. And would that be a percentage of
4 his collections or St. Thomas Neurosurgical's
5 collections? In other words --

6 A. His collections.

7 Q. His collections. Okay. So the more shots
8 that he gives and the surgical -- St. Thomas
9 Neurosurgical is paid for, then the more money he
10 makes; is that correct?

11 A. Yes.

12 Q. Okay. So would you agree that
13 Dr. Culclasure has a financial incentive to give as
14 many epidural steroid injections as possible in as
15 short a period of time as possible?

16 MR. GIDEON: Objection to the form.

17 Q. (By Mr. Nolan) You may answer.

18 A. No.

19 Q. All right. Why would you not agree with
20 that?

21 A. Because I think that he doesn't self-refer
22 the patients. So if he's only sent 50, he can only do
23 50.

24 Q. Before this outbreak, has there ever been a
25 problem with Dr. Culclasure being unable to keep his

1 MR. NOLAN: I want --

2 MR. GIDEON: All three?

3 Q. (By Mr. Nolan) It's one question that I'd
4 like you to answer.

5 MR. GIDEON: It's three questions all
6 rolled together. I object to it.

7 MR. NOLAN: Okay.

8 Q. (By Mr. Nolan) You can go ahead and
9 answer.

10 A. I've forgotten it now. What's the...

11 Q. Before the outbreak, was Dr. Culclasure the
12 only anesthesiologist -- anesthesiologist giving shots
13 at St. Thomas Neurosurgical?

14 A. No.

15 Q. All right. But Dr. Culclasure gave most of
16 the shots; is that true?

17 A. Yes.

18 Q. All right. And how many other doctors gave
19 some shots in addition to Dr. Culclasure?

20 A. I'm guessing, but I think in addition to
21 Culclasure, around five.

22 Q. Okay. And why -- why was it set up that
23 way?

24 A. I think it was mainly set up that way so
25 that the patient wait wasn't as long. We can only do

Page 58

Page 60

1 plate full, so to speak, with epidural steroid
2 injections work that was being referred by Howell
3 Allen Clinic?

4 A. You're asking if he was busy enough?

5 Q. Right.

6 A. If there was ever a time where he wasn't
7 busy?

8 Q. Correct.

9 A. Not that I remember.

10 Q. All right.

11 A. But he -- he's done a lot of different pain
12 management stuff too through the years that has come
13 and gone so...

14 Q. Okay.

15 A. Not that I remember.

16 Q. So am I correct in understanding that, in
17 fact, Howell Allen was sending so many folks over to
18 St. Thomas Neurosurgical for epidural steroid
19 injections before the outbreak that Dr. Culclasure
20 could not give shots to all of those people, there had
21 to be other anesthesiologists to come in and basically
22 take up overflow?

23 MR. GIDEON: Objection to the form.

24 Which of the three questions you want him
25 to answer?

1 so many in a day. And so the patients didn't have to
2 wait a long time to get the injection.

3 Q. All right. And so would I be correct in
4 understanding that Howell Allen Clinic was referring
5 more patients -- more patients to St. Thomas
6 Neurosurgical than Dr. Culclasure could treat
7 single-handedly?

8 A. Yes.

9 Q. But under Dr. Culclasure's compensation
10 system, if he averaged ten shots a day as compared to
11 20 shots a day, he would make more money if he was
12 giving 20 shots a day as opposed to ten shots a day;
13 is that correct?

14 A. Yes.

15 Q. Now, the collections that -- let me ask you
16 this: You heard Ms. Schamberg explain yesterday that
17 when she decided and Dr. Culclasure decided that St.
18 Thomas Neurosurgical would begin buying MPA from NECC,
19 that occurred immediately after the previous supplier,
20 Clint Pharmaceuticals, increased its price from \$6.49
21 a vial to \$8.95 a vial.

22 Do you recall that line of her testimony?

23 A. Yes.

24 Q. And so you would agree that when St. Thomas
25 Neurosurgical opted for that less expensive source of

1 MPA -- and I'm comparing Clint Pharmaceuticals' price
2 with NECC's price -- that saved the clinic, St. Thomas
3 Neurosurgical, money; is that true?

4 A. When Clint went up on the price with the
5 supply --

6 Q. Right.

7 A. -- issue? Yes.

8 Q. Right. Now, was that cost savings passed
9 on to the patients or did it increase the
10 profitability of the -- of the clinic for its owners?

11 A. It was not passed on to the patients.

12 Q. All right. So that means that that cost
13 savings caused the clinic to be more profitable for
14 its owners; correct?

15 A. Yes.

16 Q. The owners being Howell Allen Clinic and
17 St. Thomas; correct?

18 A. Yes.

19 Q. Now, we know now that patients received
20 epidural steroid injections that included tainted
21 steroids or contaminated steroids that were procured
22 from NECC; correct?

23 A. Yes.

24 Q. All right. And did St. Thomas
25 Neurosurgical charge the patients or their

1 Q. All right. Tell us about that, what you
2 remember about that.

3 A. I mean, I think there were several
4 different discussions. I'm not sure which ones you're
5 referring to. There was discussion about patients
6 calling, complaining that they shouldn't have to pay
7 any copay or anything for the procedure at the surgery
8 center. There was discussion about patients that went
9 in through the ER and had to have procedures done.
10 There was discussion about that.

11 We ended up putting two of our nurses at
12 STOPNC to see patients, there were questions about
13 that. So there were several different discussions
14 about payment.

15 Q. Okay. All right. Let's break that down.
16 What was the first discussion you mentioned?

17 A. I believe there was some discussion from
18 patients asking about whether or not they owed their
19 copay for the injections during the tainted period.

20 Q. All right. And so was that issue ever
21 resolved?

22 A. To the best of my knowledge, it was. I
23 don't remember. I just remember it happening. I
24 don't remember the details.

25 Q. Do you remember how it was resolved?

1 representative payors such as the government through
2 Medicare or insurance companies, for example -- did
3 St. Thomas Neurosurgical charge for those epidural
4 steroid injections when they were given?

5 A. Did we submit a bill for the service when
6 it was given?

7 Q. Yeah.

8 A. Yes.

9 Q. And was St. Thomas Neurosurgical paid for
10 that?

11 A. I would assume just like anything else in
12 healthcare, I would hope so, but doesn't necessarily
13 mean always get paid.

14 Q. Well, after the outbreak, did St. Thomas
15 Neurosurgical make any effort to refund any payments
16 that it had received for contaminated shots that were
17 administered?

18 A. I don't think so. I don't remember.

19 Q. And I picked up from looking through
20 e-mails that were produced that there was apparently
21 some discussion after the outbreak about who was going
22 to pay for the care that the patients received in
23 contending with meningitis infections. Were you
24 involved in any of that discussion?

25 A. I believe so.

1 A. No. I think we contacted the insurance
2 companies and they said to bill it like normal. I
3 mean, there were -- there were various different ways
4 to -- I don't remember the details.

5 Q. So as far as you know, were patients
6 required to pay their copays for the contaminated
7 shots that they had received?

8 A. As far as I know.

9 Q. Okay. Was any effort made to refund those
10 monies to the patients?

11 A. There was discussion about it, but I don't
12 know that we ever made a decision on -- I think a lot
13 of that was based on conversations with the insurance
14 companies, how they wanted us to handle it.

15 Q. Okay. And when patients went to the
16 emergency room at St. Thomas at St. Thomas
17 Neurosurgical's suggestion, who paid for the care that
18 they received there?

19 A. I don't know how that was handled.

20 Q. All right. Well, do you know whether
21 Howell Allen Clinic surgeons had to treat any patients
22 who went to the St. Thomas emergency room?

23 A. I think some of our physicians saw patients
24 in the ER, but I'm not sure.

25 Q. Okay. Do you know whether any of your

Page 65

1 physicians had to perform surgical procedures such as
2 irrigating an epidural abscess as a result of the
3 patient having received an epidural steroid injection
4 at St. Thomas Neurosurgical?

5 A. I believe so.

6 Q. And did Howell Allen charge for that?

7 A. I think so.

8 Q. As far as you know, were they -- was Howell
9 Allen paid for doing those procedures?

10 A. I don't know.

11 Q. And why did Howell Allen --

12 A. I don't know -- I don't know if we billed
13 for those or not. I can't remember if we billed for
14 those or not.

15 Q. The epidural steroid injections that are at
16 issue in this case, what is your understanding of what
17 the active ingredient was in those injections?

18 A. The active ingredient in MPA?

19 Q. So it's your understanding that the
20 injection was MPA; correct?

21 A. Yes.

22 Q. All right. Now, am I correct in
23 understanding that St. Thomas Neurosurgical's
24 registered agent for service of process is
25 Dr. Lanford; is that right?

Page 67

1 A. Looks like through August 2012.

2 Q. Okay. And beginning when?

3 A. The bottom set of numbers would have been
4 the previous year, so that would have been '11.

5 Q. Okay.

6 A. And then the top set of numbers would have
7 been the current year.

8 Q. All right. So for the bottom set of
9 numbers, what was the -- what would the total net
10 receipts for 2011 for St. Thomas Neurosurgical?

11 A. \$2,477,495.

12 Q. And how is net receipts calculated?

13 A. After write offs, adjustments, refunds.

14 Q. Okay. And does this report indicate the
15 total profits for that entity for 2011?

16 A. No.

17 Q. Nor for 2012; is that correct?

18 A. Correct.

19 Q. So the net receipts, is that actually
20 dollars in the door, so to speak?

21 A. That's just dollars in the door.

22 Q. All right. Let me hand you a group of
23 documents we're going to make Exhibit No. 67. It
24 begins at STOPNC_0002425, and I'm going to ask you to
25 tell us what these are.

Page 66

1 A. Yes.

2 Q. And that's the same person who's the
3 registered agent for service of process for Howell
4 Allen Clinic; is that correct?

5 A. Yes.

6 Q. And why was it set up so the same guy would
7 be the registered agent for those two entities?

8 A. I don't know.

9 (Exhibit 66 was marked for
10 identification.)

11 Q. (By Mr. Nolan) Let me hand you a group of
12 documents that we're going to make Exhibit No. 66, and
13 it starts at St. Thomas entities 001777. Take a
14 moment to familiarize yourself with this and I'll ask
15 if you can tell us what it is.

16 A. Just the first page?

17 Q. The whole thing.

18 MR. GIDEON: Can you make the print a
19 little smaller next time?

20 THE WITNESS: Okay.

21 Q. (By Mr. Nolan) What is this?

22 A. STOPNC financial reports.

23 Q. Okay. And let's look at the last page, if
24 we could, St. Thomas entities 001803. Can you tell
25 what time period this financial report covers?

Page 68

1 (Exhibit 67 was marked for
2 identification.)

3 THE WITNESS: Can I just ignore the
4 e-mail on the top?

5 Q. (By Mr. Nolan) No. Let me -- let's talk
6 about the e-mail and then we'll start ignoring it
7 together, I guess.

8 A. Okay.

9 Q. It looks like the top e-mail is from a
10 woman named Jennifer Hendricks to Ms. Schamberg; is
11 that correct?

12 A. Correct.

13 Q. And who is Ms. Hendricks?

14 A. She works for St. Thomas Health and she's
15 the one that reviews the financials for STOPNC.

16 Q. Okay. I got it. And so it appears that
17 she attached the -- what's labeled as the St. Thomas
18 Neurosurgical board report and it's dated
19 December 31st of 2011. Do you see that?

20 A. Yes.

21 Q. Okay. And this is the type of document
22 that you would be familiar with because you'd get a
23 copy of it as a member of the board; is that correct?

24 A. Correct.

25 Q. And why does it say at the top St. Thomas

Page 69

1 Health?

2 A. I don't know other than that might be on
3 everything that Jennifer -- I think Jennifer does a
4 lot of the joint ventures for St. Thomas, reviewing
5 the financials.

6 Q. Okay. All right. Well, can you -- can you
7 direct us to the page of this report that would allow
8 us to discern what the profits were for St. Thomas
9 Neurosurgical for that particular year?

10 A. It looks like Page 2 on the bottom.

11 Q. All right. So Page 2 on the bottom. And
12 so what does it reflect as being the profit for that
13 entity for 2011?

14 A. 624,000.

15 Q. Okay. And that would have been divided
16 equally between the joint venturers; is that correct?

17 A. No.

18 Q. Why not?

19 A. We typically try to keep roughly a hundred
20 to \$150,000 in the bank.

21 Q. I gotcha.

22 A. And so that number wouldn't reflect the
23 amount of any kind of distribution. That number would
24 be less than that.

25 Q. I gotcha. So some of the profits would

Page 70

1 have been retained by the entity, but any
2 distributions would have been equal to the two joint
3 venturers; is that correct?

4 A. Correct.

5 Q. All right. I'm with you. Okay. And then
6 it indicates that there are various expenses that were
7 removed before the profits were calculated. Do you
8 see that?

9 A. Yes.

10 Q. All right. And under salaries and wages,
11 does that include the people who were Howell Allen
12 employees?

13 A. That includes all of the STOPNC staff.

14 Q. All right.

15 A. That's what that includes.

16 Q. And those are people who were getting their
17 paychecks from Howell Allen Clinic?

18 A. Correct.

19 Q. Okay. So am I correct in understanding
20 that in addition to receiving any distribution of
21 profits from St. Thomas Neurosurgical, Howell Allen
22 also was reimbursed for the paychecks that were sent
23 to the folks who worked at St. Thomas Neurosurgical?

24 A. Yes.

25 Q. Okay. And then I guess employee benefits

Page 71

1 is the cost of the benefits for the same people we've
2 just been mentioning; correct?

3 A. Yes.

4 Q. Now, would Dr. Culclasure's compensation be
5 included in the salaries and wages line, the 611,000
6 and change?

7 A. No.

8 Q. Okay. And is his -- is his compensation
9 deducted as an expense anywhere in this report?

10 A. No.

11 Q. And is the reason for that that when
12 Dr. Culclasure gives a shot over at St. Thomas
13 Neurosurgical, Howell Allen Clinic sends a separate
14 bill to the payor for that service?

15 A. He's a Howell Allen employee so none of his
16 costs would be included on this financial statement.

17 Q. All right. But the other people who work
18 there at -- at St. Thomas Neurosurgical, they are also
19 Howell Allen employees; correct?

20 A. Correct.

21 Q. Okay. And so why is Dr. Culclasure treated
22 differently than those other employees?

23 A. We included those employees under Howell
24 Allen for the simple reason that -- the ease of doing
25 payroll and it made it -- it made us -- it made us

Page 72

1 able to give them better benefits. If it was just a
2 surgery center with 12 employees, it's a tough time
3 getting good benefits. So that's the reason why we
4 include those as Howell Allen employees, is to be able
5 to provide benefits for them --

6 Q. Okay.

7 A. -- is the main reason.

8 Obviously there's some ease of doing
9 payroll as opposed to having to do two payrolls. We
10 just do one payroll and then those employees for
11 STOPNC are isolated as a separate cost center and we
12 charge that cost back to the surgery center.

13 Q. And so why not put Dr. Culclasure in that
14 group?

15 A. Because he's not an employee of the surgery
16 center.

17 Q. Okay. Am I correct in understanding that
18 when Dr. Culclasure gives a shot, an epidural steroid
19 injection at St. Thomas Neurosurgical, Howell Allen
20 Clinic send a separate bill to the payor, the
21 government, Medicare or an insurance company like Blue
22 Cross/Blue Shield for Dr. Culclasure's service in
23 administering that shot; is that true?

24 A. That's true.

25 Q. All right. So as we look back at the board

Page 73

1 report, you see the expense item of purchased
2 services --

3 A. Yes.

4 Q. -- 223,000 and change.

5 What does that include?

6 A. I think that's the management fee that's
7 paid to us is included in that --

8 Q. Okay.

9 A. -- category.

10 Q. All right.

11 A. I believe that's what that is.

12 Q. Okay.

13 A. And then there might be some other services
14 included in there. I'm not sure.

15 Q. Okay. How is it -- how does St. Thomas
16 Neurosurgical go about tracking the number of epidural
17 steroid injections that are given each month?

18 A. I don't know.

19 (Exhibit 68 was marked for
20 identification.)

21 Q. (By Mr. Nolan) Let me hand you something
22 that we'll make Exhibit No. 68. And let me just ask
23 you whether you're familiar with this document. It
24 begins at STOPNC_0004219. Are you familiar with that
25 document?

Page 74

1 A. Okay.

2 Q. Are you familiar with that document?

3 A. I'm familiar with the first -- the first
4 two pages. I'm not familiar with the third page.

5 Q. Okay. Well, let's talk about the first
6 two. Tell us what you're -- tell us about those
7 pages.

8 A. Just volume from STOPNC.

9 Q. Okay.

10 A. All the procedures done.

11 Q. So STOPNC uses Excel spreadsheets to keep
12 up with the volume of procedures that are done at that
13 facility; is that correct?

14 A. I don't know if -- this is a document Debra
15 just sends me that just tells me the information. I
16 don't know if they use this for anything more than
17 just recordkeeping.

18 Q. And how often does Ms. Schamberg send this
19 type of document to you?

20 A. Usually on a quarterly basis.

21 Q. And is that something that you require her
22 to do?

23 A. It's just something we've always done, yes.

24 Q. And what's the purpose of that?

25 A. Just so I know what they're doing over

Page 75

1 there.

2 (Exhibit 69 was marked for
3 identification.)

4 Q. (By Mr. Nolan) Let me hand you a set of
5 documents we'll make Exhibit No. 69 beginning at St.
6 Thomas entities 012933. And can you tell us generally
7 what this is.

8 A. An e-mail between Jennifer and Debra about
9 the financial report for the board.

10 Q. Okay. So this basically contains the same
11 type of information as we find in Exhibit No. 67 from
12 the previous year; is that right?

13 A. Yes.

14 Q. Now, you mentioned that Dr. Culclasure --
15 his compensation is a percentage of his collections.
16 Why is it set up that way?

17 A. I don't know.

18 Q. Has it been that way since -- since you
19 were there?

20 A. Yes.

21 Q. Was Dr. Culclasure working for Howell Allen
22 Clinic when you started working for that company in
23 2007?

24 A. Yes.

25 Q. Since you've been working there in 2007,

Page 76

1 have you ever learned anything about why his
2 compensation is set up on a percentage basis?

3 A. No.

4 Q. Can I ask you to look back at Exhibit
5 No. 67, which is the board report for 2011.

6 A. Okay.

7 Q. You see the line item that is for supplies?

8 A. Yes.

9 Q. 217,000 and change. Do you see that?

10 A. Yes.

11 Q. What does that include?

12 A. I believe that would be all supplies,
13 office supplies, medical supplies, imaging supplies.
14 I believe that would all go into that category.

15 Q. Does that include medications?

16 A. Probably, yes. I think it's any medical
17 supplies that we use.

18 Q. Now, the management -- the professional
19 services line item that you described as a management
20 fee that goes to Howell Allen, what are the components
21 of that?

22 A. I'm not sure if that's under professional
23 fees or purchased services. But that management fee
24 includes anything, payroll that our staff does,
25 billing and collection, information technology.

Page 77

1 Anything that the Howell Allen Clinic staff has to do
2 for STOPNC.

3 Q. Okay.

4 A. That aren't STOPNC employees.

5 Q. All right. What is your understanding of
6 what professional fees includes?

7 A. I'm not sure. That's what I was saying,
8 I'm not sure if professional fees is the management
9 fee or purchased services.

10 Q. I gotcha. Okay. Let me hand you a
11 collection of documents we'll make Exhibit No. 70. It
12 begins at STOPNC_0712, and can you tell us what these
13 documents are.

14 (Exhibit 70 was marked for
15 identification.)

16 THE WITNESS: A service agreement.

17 Q. (By Mr. Nolan) Okay. So this document is
18 the various services that Howell Allen Clinic provides
19 for St. Thomas Neurosurgical; is that right?

20 A. Yes.

21 (Exhibit 71 was marked for
22 identification.)

23 Q. (By Mr. Nolan) All right. Let me hand you
24 a set of documents we're marking Exhibit 71. It
25 starts at St. Thomas entities 003622, and ask you to

Page 79

1 A. Yes, that's the same thing as the board.

2 Q. Same thing as the board. Okay. And so
3 does this refresh your memory as to who the board
4 members were at the time of the outbreak?

5 A. Yes.

6 Q. All right. So these four people listed as
7 official officers, those were the four board members
8 of St. Thomas Neurosurgical at the time of the
9 outbreak?

10 A. Yes.

11 (Exhibit 72 was marked for
12 identification.)

13 Q. (By Mr. Nolan) Let me hand you an e-mail
14 which we'll make Exhibit No. 72, STOPNC_0002431, and
15 let me ask you if you recognize that?

16 A. Okay.

17 Q. So you sent this e-mail to Ms. Schamberg in
18 May of 2012; is that correct?

19 A. Yes.

20 Q. All right. And what prompted you to send
21 this e-mail?

22 A. Based on my memory, I had a meeting with
23 the secretaries who do the scheduling, and these were
24 the issues that they asked -- I asked them to e-mail
25 me the issues they were having and I e-mailed those to

Page 78

1 tell us what this is.

2 A. Looks like it's part of a recredentialing
3 application for Amerigroup on disclosure of ownership.

4 Q. Okay. And so it's from Cindy Williams to
5 you, the e-mail is. Who is Cindy Williams?

6 A. She works for St. Thomas.

7 Q. All right. She's listed as being the
8 director of joint venture contract and managed care.
9 Do you see that?

10 A. Uh-huh (affirmative).

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. And the next page gives information
14 about the ownership of St. Thomas Neurosurgical;
15 correct?

16 A. Yes.

17 Q. And it seems to have information about how
18 the various St. Thomas entities are interrelated. Do
19 you see that?

20 A. Yes.

21 Q. Okay. And then it lists the -- the
22 officers of St. Thomas Neurosurgical. Do you see
23 that?

24 A. Yes.

25 Q. Is that synonymous with the board?

Page 80

1 Debra.

2 Q. Okay. And the fourth point that you list
3 is medication differences between the competition and
4 STOPNC. Do you see that?

5 A. Yes.

6 Q. What is that about?

7 A. I think that was about how other surgery
8 centers around town would not make patients wait after
9 being off a medication. You know, a lot of times
10 they'll make a patient wait. They'll quit taking a
11 blood pressure medicine or something and have a
12 procedure within X number of days. And that was where
13 I believe we were making the patient wait longer than
14 the competition was after being off certain types of
15 medication. Other facilities were doing it quicker
16 than we were.

17 Q. How did you first learn that there was a
18 problem associated with St. Thomas Neurosurgical in
19 September of 2012?

20 A. John Culclasure called me on Wednesday
21 night, September the 19th, about a patient, I believe,
22 that was at Vanderbilt. And at the time, the patient
23 was a recent -- had received an injection at STOPNC, I
24 believe July 28th, 26th, 28th, something like that.

25 Q. And did Dr. Culclasure indicate that it

Page 81

1 appeared that the Vanderbilt patient was suffering
2 from meningitis?

3 A. No. He didn't know what it was. I think
4 he called it Aspergillus, and I don't know anything
5 about what that is, but it wasn't meningitis.

6 Q. Did he indicate anything about Aspergillus
7 being a type of fungus?

8 A. No.

9 Q. And so how long did you talk with
10 Dr. Culclasure?

11 A. Five to ten minutes.

12 Q. All right. And what was your takeaway from
13 that conversation?

14 A. Really nothing other than that the patient
15 was a Howell Allen patient who had an injection at
16 STOPNC in July and was sick at Vanderbilt.

17 Q. And then -- so what happened next?

18 A. The next afternoon, John called me again
19 and I believe he said there was maybe two patients at
20 St. Thomas. It was either two or -- it was either two
21 patients at St. Thomas and then two -- another one at
22 Vanderbilt, maybe four total that were sick and they
23 seemed to all have been given injections within the
24 past month or so. So that was Thursday, September
25 the 20th. And so me and John on the phone decided to

Page 83

1 A. I -- I don't -- I don't remember.

2 Q. Whether it was you or Dr. Culclasure?

3 A. I don't remember if it was me or John. I
4 don't remember. We both agreed to close it, but I
5 don't remember who.

6 Q. All right. And at the time you decided to
7 close the facility, how many people were you aware of
8 who were apparently sick in the aftermath of receiving
9 one of these injections?

10 A. I believe at the time it was four.

11 Q. Okay. All right. And I think you
12 mentioned that two of those were at St. Thomas; is
13 that correct?

14 A. I believe so.

15 Q. And where were the other two?

16 A. I believe at Vanderbilt.

17 Q. All right. And was the St. Thomas
18 Neurosurgical center closed at the beginning of the
19 day on the 20th or the end of the day on the 20th? In
20 other words --

21 A. End of the day. He called me around 4:00
22 or so. It was in the afternoon. But it was at the
23 end of September the 20th.

24 Q. And why did you think the clinic should be
25 closed?

Page 82

1 close the facility until we figured out what was going
2 on.

3 Q. Okay. And so when Dr. Culclasure called
4 you on September the 19th, his first call, was that
5 out of the ordinary or did he typically call you if it
6 appeared that a patient was suffering some type of
7 post-procedure complication?

8 A. We had never had an issue with any patient
9 since I had been there at STOPNC. So it was out of
10 the ordinary for him to call me, but it was only
11 because we never had an issue previously.

12 Q. All right. And so at the time that you --
13 am I correct in understanding that the decision to
14 close the facility on September the 20th was made by
15 you and Dr. Culclasure?

16 A. Correct.

17 Q. Was anyone else involved in that decision?

18 A. I believe I hung up the phone from him and
19 contacted Dr. Lanford and contacted Dr. Batchelor and
20 just told them what we were doing and they both agreed
21 with it so -- but me and John had already decided to
22 close prior to discussing with them. It was really
23 just calling to inform them what we were doing.

24 Q. And who -- who first suggested that the
25 clinic should be closed?

Page 84

1 A. Care of the patients. Scared to death.

2 Q. And so what happened next?

3 A. So I went -- I believe Debra was out of
4 town then. So I went over there Friday and met with
5 John and at the time, there was no common theme as far
6 as who was in these rooms with these patients that
7 were sick. It wasn't -- you know, there wasn't one
8 nurse that was in all four of them. It was a
9 different kind of different team.

10 So we kind of thought that it was one of
11 the products we were using. We didn't -- my first
12 thought was it's got to be the needles. I'm diabetic
13 so I take shots and I know how needles get infected.
14 So immediately that's what I thought it was. But it
15 was kind of spending time wondering which one -- one
16 of the products is infected, has something wrong with
17 it.

18 Q. So your thought was it's got to be the
19 needles. Did Dr. Culclasure indicate what he
20 suspected?

21 A. No. I think -- I think his was just kind
22 of it's got to be something. We don't know what it
23 is. It's got to be one of the products that we're
24 using because nothing else is the same. I believe one
25 of the patients -- I think Culclasure was the only

1 common person in all four of the rooms.

2 Q. So he was the common link in those four
3 patients that you were aware of at that time?

4 A. Correct.

5 Q. All right. And so what happened next?

6 A. The state came by that Friday, and then
7 starting the next week was when we were meeting with
8 the state, phone calls with the state, still didn't
9 have any idea what was going on, and it just kind of
10 progressed from there to calling the patients,
11 checking on them, you know, asking if they were okay,
12 if they had a problem. If so, send them to an ER and
13 then to sending letters.

14 Q. All right. Now, you said that there were
15 meetings with the state. Who was included in those
16 meetings?

17 A. I think those were more phone calls with
18 the state.

19 Q. Okay.

20 A. Conference calls. Culclasure was on -- I
21 believe he was on all of them. I believe Dr. Latham
22 was on -- from St. Thomas was on some of the calls. I
23 may have called in to one or two of them, but
24 clinically, I didn't know what they were talking about
25 so I don't think I continued to call in to those phone

1 A. Correct.

2 Q. And so why was Dawn Rudolph being included
3 in these post-outbreak meetings?

4 A. I think because the patients were going --
5 were -- there were patients at St. Thomas at the time
6 that were sick. I'm not sure if we were directing
7 patients to St. Thomas yet, but I know there were
8 patients at St. Thomas.

9 Q. All right. And how many meetings do you
10 recall being involved in in which Ms. Rudolph
11 attended?

12 A. Phone calls or face-to-face, sit down
13 meetings?

14 Q. Let's break it down. Let's talk about
15 face-to-face meetings first.

16 A. I believe just one.

17 Q. All right. And was that the meeting that
18 you referred to in the e-mail that you drafted for
19 Dr. Lanford that we talked about earlier?

20 A. I'm not sure.

21 Q. Okay. Was there a meeting where Ms.
22 Rudolph indicated that she wanted to be the buffalo?

23 A. Right. Yes.

24 Q. Okay. And what -- what did you take that
25 to mean, she wanted to be the buffalo?

1 calls.

2 Q. Okay.

3 A. I would wait on Culclasure to tell me, hey,
4 this is what is going on, this is what we need to do.

5 Q. And in addition to meetings with the state,
6 were there any meetings with people at St. Thomas?

7 A. The STOPNC board, we met, I believe that
8 first week. I believe we had a conference call and a
9 meeting that week. I think the scary thing for us was
10 that more patients continued to get sick. So that was
11 the scary thing for us.

12 Q. And so was Dawn Rudolph included in any of
13 these meetings?

14 A. I believe so, yes.

15 Q. And what about Dr. Schatzlein?

16 A. I don't think so.

17 Q. Okay.

18 A. He might have been invited, but I don't
19 know if he was -- I don't remember him being on any
20 phone calls or any -- in any meeting.

21 Q. All right. And so we now know that at that
22 time Ms. Rudolph was not on the board of St. Thomas
23 Neurosurgical. The board representatives for St.
24 Thomas consisted of Dale Batchelor and Craig Polkow;
25 correct?

1 A. That I think the idea was that we wanted to
2 stand up and take care of the patients and not act
3 like we didn't know what was going on.

4 Q. So stand together and weather the storm, so
5 to speak?

6 A. Yes.

7 Q. All right. In addition to Ms. Rudolph as
8 well as Dr. Batchelor and Mr. Polkow, were there any
9 other St. Thomas representatives who participated in
10 any face-to-face meetings?

11 A. The only person I would think would have
12 been there would have been Dr. Latham.

13 Q. Okay.

14 A. I don't remember anybody else being there.

15 Q. Okay. And so what was the topic of these
16 meetings?

17 A. I think the first meeting was we didn't
18 know what it was -- what was going on at the time,
19 what do we do. Then I think later it was how are we
20 doing, how are we handling these phone calls, how are
21 we handling mailing these letters. You know, after
22 discussions with the state, you know, to determine
23 what we needed to do next and just to keep everybody
24 informed as to what we were doing.

25 Q. Okay. All right. Any other meetings that

1 you recall?

2 A. Not that I remember.

3 Q. Tell us --

4 A. I think we had a meeting with the ER

5 doctors before we started sending the patients in to

6 the ERs. I think we met with Dr. Morrison.

7 Q. Okay. Tell us about the telephone

8 conferences. I'm sure there were several of those; is

9 that correct?

10 A. Uh-huh (affirmative).

11 Q. Is that correct?

12 A. Yes.

13 Q. And, I'm sorry, you're doing a great job,

14 but uh-huhs (affirmatives) or huh-uhs (negative) don't

15 show up on the transcript.

16 A. Correct. Right.

17 Q. Okay. And who was included on these

18 telephone calls?

19 A. The board.

20 Q. Anyone else?

21 A. I believe Dr. Culclasure, probably Debra.

22 Q. Okay. Anyone else?

23 A. And I would think maybe Dr. Latham. Dr.

24 Latham was very involved with all of this, so I'm

25 guessing, but that would be who I would think would be

1 on the roster.

2 Q. What about Rebecca Climer?

3 A. I don't know if she -- she might have come

4 to one of the meetings.

5 Q. Okay. So she may have attended one of the

6 face-to-face meetings; is that correct?

7 A. She might have.

8 Q. All right. And is she the chief

9 communications and marketing officer for St. Thomas

10 Health?

11 A. I think so.

12 Q. Is it your understanding that she was the

13 head PR person inside St. Thomas Health?

14 A. Yes.

15 Q. Okay. And do you know why it is that she

16 came to one of the meetings?

17 A. I think we asked for her to come to the

18 meeting because we needed help.

19 Q. And you needed help with what specifically?

20 A. I think getting the message out to

21 patients. That was one of our biggest concerns at the

22 time was that we wanted to find every possible way.

23 You know, we had Internet, we had phone calls, we had

24 letters, we wanted to make sure there was -- that we

25 were getting to every one of the patients to make sure

1 that they knew what was going on, to get help if they

2 needed it.

3 Q. So would I be correct in understanding that

4 at this point, shortly after the outbreak, and the

5 days and weeks following the outbreak, Howell Allen

6 Clinic and St. Thomas Neurosurgical's chief concern

7 was getting the word out to patients so that patients

8 could receive treatment if necessary; is that true?

9 A. Yes.

10 Q. Okay. And Howell Allen Clinic and St.

11 Thomas Neurosurgical, they were willing to do whatever

12 it took to get the word out to those patients so that

13 people could request or get treatment if necessary; is

14 that true?

15 A. Yes.

16 Q. Were there any other concerns that Howell

17 Allen Clinic and St. Thomas Neurosurgical were focused

18 on during these weeks immediately after the outbreak?

19 A. I think I was -- I was concerned about the

20 media side of it just simply because I had never had

21 any -- I've never had to interact with the media in my

22 career. And so I was getting phone calls every

23 30 minutes from newspapers, radio stations, news

24 channels and I've never, ever dealt with that before.

25 And so that was one of my questions to Rebecca Climer

1 was, help, you know, I'm stuck here. I don't really

2 know what to do.

3 You know, I felt guilty because part of me

4 wanted to get on the TV, you know, and say, "Hey, if

5 you got it and had an injection, you need to get into

6 the hospital immediately," but then there was another

7 part of me that wasn't sure what to do.

8 Q. Okay. All right. And so in addition to

9 Ms. Climer and the other people that you've mentioned,

10 did anyone else associated with St. Thomas attend any

11 of these meetings?

12 A. Not that I recall. I think I gave you the

13 roster of the people that I would -- I think with

14 Rebecca Climer, she had a couple of employees that

15 worked in the marketing department that may have come

16 to a meeting, but I'm not sure.

17 Q. Okay. Did Berry Holt attend any of the

18 meetings?

19 A. I don't think so.

20 Q. Okay. What about conference calls?

21 A. He might have been on a conference call.

22 Q. Okay. You say might have been on a

23 conference call. Do you recall a conference call that

24 involved not only members of the STOPNC board, but

25 also Dr. Schatzlein and Mr. Holt?

1 A. I don't remember talking to Schatzlein at
2 all about it. Berry may have been part of the
3 conference call.

4 Q. Is it your recollection that he was?

5 A. No. I remember he was involved, but I'm
6 not sure if that was e-mail, phone, conference. I
7 don't remember.

8 Q. All right. So tell us what St. Thomas
9 Neurosurgical and Howell Allen Clinic did to get the
10 word out to patients, so to speak.

11 A. First we called all the patients. We had a
12 date. I believe initially it was August and
13 September. And called them and just asked if they
14 were having any issues. We didn't mention any --
15 anything else. And then -- then we sent letters to
16 all the patients. And then the state continued to
17 move the date back because I think we were just doing
18 maybe July 20th to September 20th, and I think the
19 state moved back to July the 1st. So that required us
20 to call another, you know, couple hundred patients.

21 I think at one point I had -- I made a note
22 that we had contacted 835 patients, but I'm not sure
23 of the date. Then they moved back to June and it went
24 to contacting patients who had any type of procedure
25 done, not only ESIs, but anything else. So it just

1 Q. So St. Thomas Neurosurgical did not send
2 the second round of letters, they were actually sent
3 by either St. Thomas Hospital or St. Thomas Health?

4 A. Correct. I can't remember if we sent two
5 rounds of letters and they sent the third round or if
6 we sent one, they sent one. I can't remember the
7 exact number of letters that were mailed.

8 Q. But in any event, the letters that were
9 sent reflected that they were actually coming from St.
10 Thomas Neurosurgical; correct?

11 A. Correct.

12 Q. Even though they were being sent or at
13 least one round of letters was being sent by either
14 St. Thomas Health or St. Thomas Hospital; correct?

15 A. Correct.

16 Q. And who made the phone calls?

17 A. All of our -- I mean, we were closed at the
18 time so we had all of our STOPNC nurses and staff
19 making the phone calls.

20 Q. Anything else that you can remember about
21 the aftermath of the discovery of the outbreak?

22 A. No.

23 MR. NOLAN: I suggest that we take a
24 lunch break, C.J.

25 MR. GIDEON: Timingwise that's fine.

1 kind of was a moving target on what patients to
2 contact. And so it was phone calls and letters were
3 the initial blitz, and then we went and did another
4 set of phone calls. I believe we did three sets of
5 phone calls and a couple of letters over that month or
6 so after the -- after it came out.

7 Q. Did St. Thomas Neurosurgical send the
8 letters?

9 A. St. Thomas Neurosurgical sent the letters.
10 Howell Allen employees helped stuff the envelopes, get
11 them mailed.

12 Q. Okay. Did St. Thomas Hospital or St.
13 Thomas Health take charge of sending any letters?

14 MR. HOFFMAN: Objection to form.

15 THE WITNESS: I believe they helped
16 send the second round or maybe the third --
17 there was a -- there was a round of letters
18 that they sent out.

19 Q. (By Mr. Nolan) Okay.

20 A. And that was when we were too overwhelmed
21 to be able to deal with us. It was us asking for
22 their help because we just couldn't -- we couldn't do
23 it.

24 Q. Okay.

25 A. We needed help.

1 I'm going to have Chris step in for me if
2 I'm not back when you guys are ready to get
3 started again. I'm going to go see Noel
4 before his case. I went over there this
5 morning and he wasn't checked in yet.

6 MR. NOLAN: Okay.

7 MR. GIDEON: So if you're ready to go
8 back again at say 25 till 1:00, Chris is
9 going to take my place. Is that agreeable
10 with everybody until I get back?

11 MR. NOLAN: Absolutely. No problem.

12 MR. GIDEON: All right.

13 VIDEOGRAPHER: We're off the record.
14 This is the end of Tape No. 2 and the time
15 is 11:34 a.m.

16 (A lunch recess was taken at 11:34
17 a.m. and the deposition reconvened at 12:39
18 p.m.)

19 VIDEOGRAPHER: Here begins Tape No. 3
20 in the deposition of Scott Butler. We're
21 back on the record and the time is
22 12:39 p.m.

23 MR. TARDIO: George, one thing we
24 didn't say at the beginning of the
25 depositions is all objections except as to

form are reserved.

MR. NOLAN: That's fine.

Q. (By Mr. Nolan) Mr. Butler, in your earlier testimony, you mentioned that you had many friends affected by this, I think referring to the meningitis outbreak. What friends were you referring to?

A. A friend of my wife's that had an injection in August and then my best friend's --

MR. TARDIO: Don't say his name for HIPAA purposes.

THE WITNESS: No. My best friend's father had an injection the last week in July.

Q. (By Mr. Nolan) Did either of those two friends contract fungal meningitis?

A. No.

Q. Now, you -- I assume that you would always attend St. Thomas Neurosurgical's board meetings; is that correct?

A. Yes.

Q. And how frequently did those meetings occur?

A. Usually quarterly.

Q. Okay. And at those quarterly board meetings would you-all discuss the budget for that

A. No.

Q. If you look at the exhibit which is Exhibit No. 72, you see the fourth point down where you say, the medication differences between the competition and STOPNC?

A. Right.

Q. Who is the competition?

A. Just other doctors around Nashville that do epidural steroid injections and any kind of other procedures that physicians would want.

Q. And who specifically do you consider to be St. Thomas Neurosurgical's competition?

A. Really all the other surgery centers in the Nashville area.

Q. Can you give us some examples?

A. No.

Q. So you don't know the names of any healthcare entities that compete with St. Thomas Neurosurgical?

A. No. I mean, I know -- I know of -- there's a neuro -- there's an outpatient surgery center at the base of our building, BASC, but that's all -- I don't know -- I don't know who operates there or what they do there.

Q. Okay. So as a board member of St. Thomas

organization?

A. No, only the board financial report that you --

Q. Okay. So you --

A. -- that you got.

Q. -- would discuss the financial reports like the ones that we've made exhibits already to your deposition?

A. Yes.

Q. Then would you, in the context of those discussions, talk about whether the clinic was on budget, so to speak, or over-budget or under-budget?

A. Yes.

Q. Okay. And in the context of whether the clinic was performing in accordance with the budget, would you also talk about the cost and expenses that were being incurred by the clinic?

A. We might have. Though I don't remember any specific time talking about it.

Q. Well, what would you do if the clinic was performed under-budget?

A. We would talk about the reasons why it might be under-budget.

Q. Okay. And do you recall the clinic performing under-budget?

Neurosurgical, you're just not aware of other places in Nashville that patients could go to receive an epidural steroid injection?

A. I think you have to understand that those patients are referred from within Howell Allen. So you're not -- those patients are coming to our group. You're not necessarily competing. I don't consider ourselves to be competing with other surgery centers.

Q. Well, this e-mail that you sent to Ms. Schamberg, is it fair for me to say that you were concerned that some of the patients who needed epidural steroid injections could wind up having their shots at the competition if certain things didn't change at St. Thomas Neurosurgical?

A. This e-mail for me was a compilation of e-mails that I received from the secretaries. So these were not my words that you're seeing on this. I simply got e-mails from all the secretaries, copied and pasted it on this e-mail.

Q. Well, at the bottom part, it talks about Dawn. Who is Dawn?

A. She does scheduling.

Q. For who?

A. At the surgery center.

Q. At St. Thomas Neurosurgical?

Page 101

Page 103

1 A. Yes.

2 Q. Okay. And so it says, "If -- it would help
3 if Dawn would just schedule the patients instead of
4 going through the list of patients to see what they
5 don't have in the chart."

6 So someone was complaining that Dawn was
7 spending too much time making sure that the patients'
8 chart was complete before they received care at St.
9 Thomas Neurosurgical; correct?

10 MR. TARDIO: Object to the form.

11 THE WITNESS: I'm not sure I don't --
12 I'd have to read this to answer the
13 question.

14 Q. (By Mr. Nolan) Take your time.

15 A. It appears that Dawn is not scheduling
16 without everything in the chart before she puts them
17 on the schedule.

18 Q. Okay. And so did you expect Ms. Schamberg
19 to speak with Dawn and tell her not to -- you know, to
20 get patients scheduled more quickly and not to waste
21 time making sure the chart was complete before they
22 were scheduled to have an epidural steroid injection?

23 A. No. I just wanted to make her aware of the
24 issues that I had -- that the secretaries had in the
25 meeting that I had with them for her to understand

1 Q. And who -- who voiced that concern to you?

2 A. I don't know.

3 Q. Do you know if any of your local
4 competition was caught up in the fungal meningitis
5 outbreak?

6 A. I don't think so.

7 Q. Do you know whether any of your local
8 competitors purchased MPA from NECC?

9 A. I don't know.

10 (Exhibit 73 was marked for
11 identification.)

12 Q. (By Mr. Nolan) Let me hand you a group of
13 documents that we're going to make collective
14 Exhibit 73. And this is a group of several e-mails
15 that I've tried to put in chronological order. Now,
16 it also includes the newspaper article that we've
17 already discussed. It's in there chronologically and
18 we probably won't spend any time on that.

19 But other than that, it's e-mails that I've
20 attempted to put in chronological order, but because
21 of the way string e-mails work, sometimes it might not
22 be in exact chronological order.

23 But that being said, what I'd like to do is
24 go through here and talk with you about some of these
25 e-mails, many of which you were privy to; okay?

Page 102

Page 104

1 what was going on. I don't remember that we ever even
2 followed up on any of this.

3 Q. Okay. All right. The first paragraph in
4 the e-mail says -- deals with scheduling issues. You
5 see that?

6 A. Yes.

7 Q. It says, "Scheduling issues. Not being
8 able to get patients scheduled when patients care --
9 patients are in the office when urgent. Having to
10 send to the competition."

11 Did I read that correctly?

12 A. Yes.

13 Q. So am I correct in understanding that
14 apparently because of scheduling problems at St.
15 Thomas Neurosurgical, Howell Allen Clinic was having
16 to send ESI patients to the competition; is that true?

17 A. From this e-mail, it appears to be true.

18 Q. Okay. And so who is the competition that
19 Howell Allen Clinic were sending ESI patients to?

20 A. I don't know.

21 Q. Who would know that?

22 A. I assume whoever sent that to me would --
23 could tell me who they're sending those patients to.
24 I mean, there's not a list of competitors that
25 everybody sends to.

1 A. Okay.

2 Q. And the first one is on the first page,
3 it's St. Thomas entities 005622, and this at the
4 bottom appears to be an e-mail from you to Dawn
5 Rudolph, Dale Batchelor and Dr. Lanford on September
6 the 24th; is that correct?

7 A. Yes.

8 Q. Okay. And you are just -- I take it from
9 this e-mail that you are reporting to them about what
10 the current situation is. Is that a fair way for me
11 to interpret this?

12 A. Yes.

13 Q. And did you make sure that all of the
14 information in this particular e-mail was truthful and
15 accurate?

16 A. I think I based this e-mail from what I was
17 told. I don't think that I did any research on, like,
18 the number of patients that were at each facility.
19 That's just based on what I was told.

20 Q. Okay. What you were told. Okay. Well,
21 let me ask you this more specifically. This e-mail
22 was sent four days after St. Thomas Neurosurgical was
23 closed by you and Dr. Culclasure; correct?

24 A. Yes.

25 Q. All right. And then the second to last

Page 105

1 paragraph, second to last sentence, you see where it
2 says, "We have new steroids, new steroid injection
3 kits and new Omnipaque contrast"?

4 A. Yes.

5 Q. All right. And so who told you that St.
6 Thomas Neurosurgical had new steroids by October -- by
7 September the 24th?

8 A. I would guess Debra.

9 Q. Okay. And did Debra indicate that she had
10 had any problems getting new steroids on an expedited
11 basis?

12 A. I don't know. I don't remember.

13 Q. You don't recall her --

14 A. I don't remember.

15 Q. All right. All right. On the next page,
16 St. Thomas entity 014341, this is an e-mail from Dawn
17 Rudolph to you; is that correct?

18 A. Looks like I sent the first e-mail and then
19 she sent one after that.

20 Q. Okay. And your e-mail says, "We need to
21 have a STOPNC board meeting to discuss the next steps.
22 Dr. Lanford can do a conference call at 7:00 a.m.
23 tomorrow or a meeting at St. Thomas at 4:00 p.m.
24 tomorrow. Let me know what works best for both of
25 you."

Page 106

1 And then Ms. Rudolph responds, "Please call
2 me directly," and she gives a number, "ASAP." Did you
3 call her?

4 A. I would imagine that I did.

5 Q. And what happened after that? Was there a
6 meeting?

7 A. I don't remember. I mean, I -- what's the
8 date? 9/24. Yeah, I think we met the next day.

9 Q. Okay. And do you remember who was present
10 at that meeting?

11 A. No.

12 Q. Do you remember having any meetings that
13 occurred once it was determined that the source of the
14 fungal infection was the steroid that was used?

15 A. I think we found out that following
16 weekend. So I think we would have met after that, but
17 I'm not sure.

18 Q. All right. Well, did you participate in
19 any meetings in which the board of St. Thomas
20 Neurosurgical asked the question "Why did we order
21 this stuff from a compounding pharmacy"?

22 A. No.

23 Q. So that question never -- just never came
24 up in a St. Thomas Neurosurgical board meeting?

25 A. I don't remember that being discussed.

Page 107

1 Q. Okay. Did -- were you ever in any meetings
2 with anyone in which -- other than your -- your
3 company's lawyers -- with anyone in which the question
4 of who decided to buy this stuff from NECC was
5 discussed?

6 A. No.

7 Q. Did you ever make any endeavor to
8 investigate that issue?

9 A. No. Because I think I knew Debra is the
10 one that -- after we found out it was the tainted
11 steroid, that she's the one that said -- gave us the
12 details that she ordered them and the details behind
13 that. So I don't think there was ever a -- when we
14 found out what it was that was going on, I think she
15 immediately gave the details on it.

16 Q. Okay. Now, if we go back to the first
17 page, this e-mail that you sent on September the 24th,
18 we see here that Dr. Batchelor forwarded that e-mail
19 to Rebecca Climer. Do you see that?

20 A. Yes.

21 Q. Did Dr. Batchelor discuss that with you
22 before he forwarded it to Ms. Climer?

23 A. Not that I remember.

24 Q. So you don't know why he forwarded it to
25 Ms. Climer; is that true?

Page 108

1 A. Yes. I don't know.

2 Q. All right. And Page 4 is STOPNC 003501.
3 And this appears to be an e-mail string in which you
4 were included which you ultimately forwarded to
5 Dr. Culclasure and Nurse Schamberg; correct?

6 A. Yes.

7 Q. All right. Now, this is September
8 the 27th. So seven days after you closed; correct?

9 A. Yes.

10 Q. You were aware that some patients had died
11 by that point in time, weren't you?

12 A. Yes.

13 Q. Okay. And so the first e-mail at the
14 bottom is from Ms. Climer to you which apparently
15 contains language for a script to be used by St.
16 Thomas Neurosurgical when calling patients. Do you
17 see that?

18 A. Yes.

19 Q. And who drafted that script?

20 A. I don't know.

21 Q. Okay. Is it your understanding that Mr. --
22 Ms. Climer drafted the script?

23 A. I -- she e-mailed it to me is all I know.
24 I'm not sure who drafted it.

25 Q. All right. And so why is it that the --

Page 109

1 the chief communications and marketing officer of St.
2 Thomas Health would be determining what St. Thomas
3 Neurosurgical says to patients --

4 MR. TARDIO: Object to the form.

5 Q. (By Mr. Nolan) -- when calls are made?

6 A. I asked for her help.

7 Q. Okay. And so why did you ask for the help
8 of the chief communications and marketing officer of
9 St. Thomas Health in determining what should be said
10 to patients by the neurosurgical center when calls
11 were made?

12 A. I think because nobody in our -- in our
13 practice, in our management team had any experience
14 with an adverse situation and didn't really know how
15 to react to it.

16 Q. And does Ms. Climer have any medical
17 training, to your knowledge?

18 A. I don't know.

19 Q. Okay. And then after Ms. Climer sends this
20 first e-mail to you, did you give her any feedback on
21 the proposed script?

22 A. I don't think so.

23 Q. And did St. Thomas Neurosurgical ever pay
24 Ms. Climer for the work that she did in connection
25 with this e-mail and other PR efforts after the

Page 111

1 communications officer for St. Thomas Health and a
2 lawyer for St. Thomas Health would be scripting what
3 this particular ambulatory surgery center would say to
4 patients who might be suffering from a
5 life-threatening infection?

6 MR. HOFFMAN: Objection to form.

7 MR. TARDIO: Objection to form.

8 THE WITNESS: At the time, that was
9 the least of my worries, who was involved
10 with the script.

11 Q. (By Mr. Nolan) Okay. Is it true that St.
12 Thomas was taking control of what St. Thomas
13 Neurosurgical would say because St. Thomas recognized
14 that St. Thomas Neurosurgical shared their name and
15 was their agent?

16 MR. HOFFMAN: Objection to form.

17 MR. TARDIO: Object to form.

18 Q. (By Mr. Nolan) You can go ahead and
19 answer.

20 A. I think we got a script from St. Thomas
21 because the state asked us to call the patients back
22 and neither me or Debra had any idea what we needed to
23 say. So we asked for their help because we really
24 didn't have any experience at all with any kind of
25 event like this.

Page 110

1 outbreak?

2 A. No.

3 Q. And then the next e-mail further up,
4 Ms. Climer says to you and Dr. Batchelor, "Have Berry
5 review the script. He would like to add a statement
6 in case they ask, 'Why are you calling me,' say --
7 okay to say, 'There have been some reactions to the
8 procedure and we're calling to check and see if you
9 have had any reaction.'"

10 Did I read that correctly?

11 A. Yes.

12 Q. All right. And who is "they" in case they
13 ask? Who is "they"?

14 A. The patients.

15 Q. Okay. Now, is Berry a physician?

16 A. No.

17 Q. Okay. Is he a public health official?

18 A. No.

19 Q. Who is Berry?

20 A. Berry Holt, an attorney for St. Thomas.

21 Q. All right. So he's a lawyer who represents
22 St. Thomas Hospital and St. Thomas Health; is that
23 right?

24 A. To my knowledge, yes.

25 Q. Did it strike you as strange that a chief

Page 112

1 Q. So in terms of what St. Thomas
2 Neurosurgical said to patients when it initially began
3 calling patients, it said -- it followed the script
4 that Ms. Climer provided through this e-mail; correct?

5 A. To my knowledge, yes. I didn't hear every
6 call, but this was what script they were supposed to
7 follow.

8 Q. Did the state ever tell anyone to your
9 knowledge to say anything to patients that was false?

10 A. Can you ask the question again?

11 Q. Did the state ever tell anyone to your
12 knowledge to make false statements to the
13 neurosurgical center's patients?

14 A. No, I don't know that I would characterize
15 them as false statements. Maybe they would just be --
16 wouldn't contain the entire facts of the case. But at
17 this point, you have to remember we didn't know it was
18 the tainted steroid. We had no idea what it was. We
19 just had sick people in the hospital and were trying
20 to figure out how to take care of them.

21 Q. Do you think that it is important for St.
22 Thomas Neurosurgical to be truthful anytime a patient
23 poses a question to it?

24 A. Yes.

25 Q. And do you think it's important for St.

Page 113

1 Thomas Neurosurgical to be truthful with patients
2 regardless of what Berry says or what the state of
3 Tennessee says?

4 A. Yes.

5 Q. At any point did you give Ms. Climer any
6 pushback about the script that she was proposing in
7 this e-mail?

8 A. I know I complained to her about some stuff
9 during this time, but I'm not sure if I complained
10 about the script.

11 Q. Okay. Do you recall Dr. Culclasure or Ms.
12 Schamberg giving any pushback against this script that
13 was being suggested by St. Thomas Health?

14 A. No.

15 Q. Is part of the reason that St. Thomas
16 Health and you were collaborating on a script for
17 these phone calls to patients that you and St. Thomas
18 recognized that you were a joint venture functioning
19 as a partnership and you needed to have a unified
20 message, so to speak?

21 MR. HOFFMAN: Objection to form.

22 MR. TARDIO: Object to the form.

23 Q. (By Mr. Nolan) You may answer.

24 A. No, I think I just needed help dealing with
25 an adverse event that I had never had a minute worth

Page 115

1 Q. Now, is that something that was said to you
2 in an e-mail or something the state told you?

3 A. I think that was said to me. I don't know
4 if that was mentioned on a phone call or something. I
5 just remember that coming from an e-mail.

6 Q. Do you remember who you heard it from?

7 A. No.

8 Q. All right. Let's go to the eighth page of
9 this stack, STOPNC_0004312. Now, this is an e-mail
10 string, and if we look at the top of that page, it's
11 from you to Rebecca Climer, we know who she is, and
12 Dale Batchelor. He was the chief medical officer for
13 the hospital; correct?

14 A. Correct.

15 Q. All right. And Dawn Rudolph was the CEO
16 for the hospital; correct?

17 A. Correct.

18 Q. And then Berry Holt was the hospital's
19 lawyer; is that correct?

20 A. Correct.

21 Q. And then Dr. Latham was an infectious
22 disease specialist at the hospital; correct?

23 A. Yes.

24 Q. And then Craig Polkow, he was the CFO for
25 St. Thomas Health; is that correct?

Page 114

1 of experience handling.

2 Q. And so why were you requesting direction
3 from St. Thomas Health about what to say to patients
4 as opposed to requesting that direction from the
5 state?

6 A. I think we had received direction from the
7 state on what not to mention, but I think our -- our
8 interaction with the state was limited to that. I
9 don't think they had any desire to give us a script.

10 Q. And so did you -- did the state ever tell
11 you or did you ever hear the state provide any
12 specific direction about what to say and what not to
13 say to patients?

14 A. I believe I saw an e-mail from Dr. Kainer.
15 I'm not sure who it was directed to or if it was
16 forwarded to me about what or what not to mention.

17 Q. What do you recall about that e-mail?

18 A. I believe it just said not to mention
19 meningitis, and my understanding was that they were --
20 the state was concerned because they had an issue, I
21 think, in Murfreesboro with a student at MTSU getting
22 meningitis and apparently that blew up, and I think
23 that was the reasoning that I was told. I don't
24 remember who said that to me. But -- why they didn't
25 want to broadcast meningitis at that time.

Page 116

1 A. Yes.

2 Q. And then Mike Schatzlein was the president
3 and CEO of St. Thomas Health; correct?

4 A. Correct.

5 Q. And then Amanda Anderson. Did she work in
6 Ms. Climer's department?

7 A. I think so.

8 Q. And then there's several -- there's two
9 people who are with Jarrard, Inc. What is Jarrard,
10 Inc.?

11 A. I don't -- I don't know.

12 Q. Okay. So you were sending this e-mail to
13 these people at Jarrard, Inc., but you were not aware
14 of who they were or what their role was?

15 MR. HOFFMAN: Objection to form.

16 THE WITNESS: No. We met with a --
17 sometime during that time, we met with a PR
18 firm and I can't remember who it was. We
19 ended up not using them. So I don't know
20 if that's who that is or not. I'm not
21 sure.

22 Q. (By Mr. Nolan) Now, who is "we"? We met
23 with them. Who is "we"?

24 A. Me and Dr. Lanford.

25 Q. All right. I think we're going to discover

Page 117

1 that you met with a different PR firm.

2 A. Then I don't know who Jarrard --

3 Q. Do you know whether the hospital ever
4 involved an outside PR firm?

5 A. I don't know.

6 Q. Okay. And then it also goes to all the
7 physician partners at Howell Allen Clinic. Do you see
8 that?

9 A. Yes.

10 Q. Okay. And so this is the 27th. It's sent
11 within a week of when you closed the hospital -- I
12 mean closed the clinic; correct?

13 A. Correct.

14 Q. All right. And so in the e-mail from
15 Ms. Climer to you, she says, "The Department of Health
16 wants to do a press conference at noon tomorrow. We
17 have a conference call set up with Dr. Kainer, Dr.
18 Reagan and Woody McMillin with the health department
19 at 7:00 a.m. tomorrow. I will send out a conference
20 call contact information."

21 And then you say, "Rebecca, after reviewing
22 the available options, our group would support the
23 state releasing a statement that has been reviewed and
24 approved by the board of STOPNC. We feel that is the
25 best option and in the best interest of the patients

Page 119

1 Q. Okay.

2 A. -- with anybody.

3 Q. Did your group nevertheless want patients
4 who may have been injected with a life-threatening
5 solution to come in and get checked as soon as
6 possible?

7 A. Yes.

8 Q. Okay. And you and Howell Allen Clinic and
9 St. Thomas Neurosurgical wanted to get the word out to
10 those people as quickly and effectively as possible;
11 correct?

12 A. Correct.

13 Q. And that would include Dr. Lanford;
14 correct?

15 A. Correct.

16 Q. All right. Let's -- let's go to Page 7.
17 Now, at the very bottom, Ms. Climer responds to you
18 and she says, "Understood. Let's proceed with the
19 call in a.m. focusing on learning what we can about
20 all of the known facts and what would be included in a
21 potential announcement. Just to be clear, the state
22 is proposing a press conference, not the release of a
23 statement. Are you saying you would be okay with
24 representatives of the state releasing something on
25 behalf of STOPNC at a press conference," question

Page 118

1 of our group."

2 Have I read that correctly?

3 A. Yes.

4 Q. Okay. And so is it fair for me to say
5 that -- that within a week of this problem developing,
6 you are part of a group that involves all the people
7 that are listed in this e-mail and you're beginning to
8 collaborate about how to shape public perception of
9 this event? Is that a fair way for me to understand
10 what's happening at that point in time?

11 A. I think our group was just opposed to doing
12 a press conference without having any information.

13 Q. Okay. Well, did you understand that part
14 of the reason that the state wanted to have a press
15 conference was because the state was concerned about
16 public safety and wanted to get the word out about the
17 meningitis outbreak?

18 A. I'm not sure what they were -- I'm not sure
19 what the press conference was for.

20 Q. So you -- you didn't have any notion as to
21 why the state wanted to have the press conference?

22 A. No. Our group didn't want to be involved
23 in a press conference because we didn't feel like we
24 knew -- had any information that we could publicly
25 share --

Page 120

1 mark.

2 And then Dr. Lanford responds, "I would
3 advocate a press release by the health department if
4 they so choose, but still honoring the anonymous
5 nature of the proposed press conference."

6 Now, you got a copy of Dr. Lanford's
7 e-mail, didn't you?

8 A. Yes.

9 Q. Okay. And what did you understand he was
10 saying about honoring the anonymous nature of the
11 proposed press conference?

12 A. I'm not sure.

13 Q. Well, was it your understanding that at
14 that point in time, Dr. Lanford did not want either
15 Howell Allen Clinic or St. Thomas Neurosurgical's name
16 to be released to the public?

17 A. Yes.

18 Q. That was your understanding?

19 A. Yes.

20 Q. And what was your understanding of why that
21 was Dr. Lanford's desire?

22 A. I'm not sure, other than just not
23 getting -- having our name released without more
24 information.

25 Q. Okay.

Page 121

Page 123

1 A. It was really a lack of information at the
2 time.

3 Q. Well, wouldn't you agree it would be hard
4 to get the word out to STOPNC's patients without
5 using -- using the name of the clinic?

6 A. But I think you need to understand that we
7 see roughly 40,000 patients a year, and if all 40,000
8 of those patients felt like there was something that
9 Howell Allen Clinic did, you know, bought a tainted
10 steroid and injected them with it, then that can
11 unleash a flood of patient calls that we couldn't ever
12 accommodate.

13 Q. Yeah, but you would also agree, then, that
14 if there was a press release or press conference in
15 which it was conveyed, look, if you went to the St.
16 Thomas Outpatient Neurosurgical Center during this
17 window of time and received an epidural steroid
18 injection, then you should come in and get certain
19 tests performed?

20 A. I would agree with that statement, but I
21 think at that point we didn't have any window of time.
22 I mean, this was in the first seven days of this. We
23 didn't have any window of time. We didn't have -- we
24 didn't know what was causing it. We didn't have any
25 idea what it was.

1 talking about. We just didn't have enough information
2 to be able to share with people.

3 Q. But you did know where the problem appeared
4 to be originating, meaning that it was coming from St.
5 Thomas Neurosurgical; correct?

6 A. We didn't know at that point. Like I said,
7 it could have been on the elevator. We didn't have
8 any idea what it was until that weekend. I believe
9 that weekend was when it finally came out that it was
10 the NECC steroid. I believe it was the 20 -- the 28th
11 or the 29th.

12 Q. All right. Well, see, this -- this e-mail
13 from Dr. Lanford about the anonymity is sent on the
14 27th and the script had already been developed by the
15 27th; right?

16 A. Right.

17 Q. You had already developed a script for
18 calling patients. So you knew enough to develop a
19 script and start calling patients; correct?

20 A. Right.

21 Q. But you didn't feel like you knew enough to
22 have your name released to the general public?

23 A. No.

24 Q. All right. And so then Ms. Climer responds
25 to Dr. Lanford's e-mail where he talks about wanting

Page 122

Page 124

1 Q. All right.

2 A. For all we knew it was something they
3 picked up in the elevator. So we didn't -- we didn't
4 know.

5 Q. All right. So even though you didn't know
6 exactly what was causing this, do you think that
7 erring on the side of transparency and clear effective
8 communication would be the wisest course of action?

9 MR. TARDIO: Objection to form.

10 THE WITNESS: Not without the
11 details.

12 Q. (By Mr. Nolan) All right. And so would I
13 be correct in understanding, then, that although
14 you've indicated that the clinic and -- St. Thomas
15 Neurosurgical, that is, and Howell Allen Clinic was
16 concerned about getting the word out effectively to
17 patients, a countervailing concern was it didn't want
18 its name released to the public at that point in time?

19 A. I think not without more information.

20 Q. And what specifically was the information
21 it was lacking at that point?

22 A. We didn't have any information. We didn't
23 know it was the tainted steroid at that point. We
24 didn't know what it was. We didn't know what the
25 window was. We didn't know how much patients we were

1 to keep things anonymous and she says, "If we can move
2 the state off a press conference in our 7:00 a.m.
3 call -- 7A call, that will be significant. We do need
4 to be realistic in understanding that whether it is a
5 press conference or a press release, anonymity is
6 going to be short lived given the calls that we have
7 made, the multiple facilities involved, et cetera.
8 What does SVMIC advise the STOPNC board in this
9 regard," question mark.

10 I have read that part correctly?

11 A. Yes.

12 Q. All right. Now, would I be correct in
13 thinking that certainly an insurance company is not a
14 public health agency? You would agree with that;
15 correct?

16 A. Yes.

17 Q. Okay. And that if decisions are going to
18 be made that would affect the health of St. Thomas
19 Neurosurgical's patients, those decisions should be
20 made by physicians and not an insurance company. You
21 would agree with that?

22 A. Yes.

23 Q. Okay. And you understood that getting the
24 word out quickly and effectively to those who may have
25 received these injections was an important public

Page 125

1 health issue.

2 A. Yes.

3 Q. You understood that. Okay.

4 And then the next e-mail says -- and this
5 is from you back to Ms. Climer and several others.

6 "We have spoken with our attorneys who feel that we
7 have used the medication/supplies properly and handled
8 it appropriately." And I'll just stop there.

9 So you would agree that the questions --
10 the question of whether medications or supplies had
11 been used properly is really a medical issue that
12 should be answered by physicians as opposed to
13 lawyers. You would agree with that?

14 A. Yes.

15 Q. Okay. And then it says, "SVMIC has advised
16 us to make no comment. Too many unanswered
17 questions -- or questions unanswered."

18 Do you see that? You see what I'm
19 referring to?

20 A. Yes.

21 Q. Okay. And so what did you think of SVMIC's
22 advice to make no comment?

23 A. I think SVMIC's advice was to make no
24 comment at a press conference. At that point we had
25 already began calling the patients, so it wasn't --

Page 126

1 they weren't telling us to make no comment to anybody.
2 It was not to make a public comment.

3 Q. Okay. Do you know whether SVMIC ever
4 reviewed the script that was used from the phone calls
5 were made to patients?

6 A. I don't know.

7 Q. Let me ask you this: I presume that when
8 St. Thomas Neurosurgical closed on September the 20th,
9 it already had patients scheduled to come in the
10 following week and receive epidural steroid
11 injections; correct?

12 A. Yes.

13 Q. So somehow it had to communicate to those
14 patients "You don't need to come in because we're
15 closed"; is that correct?

16 A. Yes.

17 Q. And so what did St. Thomas Neurosurgical
18 tell patients who might have been coming in, say, for
19 their second or third epidural steroid injection?

20 A. I believe we told them that there was an
21 equipment problem and we were closed.

22 Q. Okay. And would you say that even if
23 someone was -- had already received an epidural
24 steroid injection at St. Thomas Neurosurgical and they
25 were scheduled the week of September the 24th to get

Page 127

1 Shot No. 2?

2 A. Are you asking me if somebody had had an
3 injection within the previous couple of months --

4 Q. Right?

5 A. -- and was scheduled to come back?

6 Q. Uh-huh (affirmative).

7 A. I think we had already called those
8 patients and asked them questions about their -- if
9 they were having any issues at that point.

10 Q. Right. Let me --

11 A. So they would have already been told, I
12 would guess, but I don't know. I wasn't on the -- I
13 didn't make any of those phone calls.

14 (Exhibit 74 was marked for
15 identification.)

16 Q. (By Mr. Nolan) Let me hand you an e-mail
17 that we'll make Exhibit No. 74, and it's
18 STOPNC_0001970. And let me ask you to take a minute
19 and take a look at it.

20 A. Okay.

21 Q. Okay. This appears to be an e-mail that
22 was generated -- string that was generated in
23 connection with a patient who was coming in for either
24 a second or third ESI and was told, as you have
25 indicated, that the center was closed because it was

Page 128

1 having equipment issues.

2 Is that what this appears to be?

3 A. Yes.

4 Q. Okay. So that's -- this is kind of an
5 example of what you were just talking about; is that
6 right?

7 A. Yes.

8 Q. Now, that -- that's a less than transparent
9 and honest thing to tell patients, wouldn't you say,
10 you're having equipment issues when in fact people had
11 already begun dying of fungal meningitis?

12 MR. TARDIO: Object to the form.

13 THE WITNESS: At that -- we were
14 canceling appointments.

15 Q. (By Mr. Nolan) Okay. But the question was
16 not whether you were canceling appointments, but
17 telling people that you were having equipment issues
18 was less than an open and honest thing to say to them.
19 You would agree with that?

20 A. I would disagree with that.

21 Q. Okay. And why would you disagree with
22 that?

23 A. Because we were canceling appointments with
24 patients who had an epidural scheduled.

25 Q. Patients who may have already received a

Page 129

1 contaminated shot; true?

2 A. But I would think those patients would have
3 already have received a phone call from our staff.

4 Q. Are you certain that all of the patients
5 who had a shot within the window of concern actually
6 received a phone call?

7 A. To my knowledge, we called all the
8 patients.

9 Q. All right. Let's go to Page 9 of our stack
10 here. This is an e-mail also dated the 27th of
11 September, and down at the bottom you're e-mailing
12 Dawn Rudolph and Dale Batchelor copying all of the
13 physicians, and it says, "After discussions with the
14 state and Culclasure, we will remain closed through
15 next Wednesday, October the 3rd."

16 And then Dr. Batchelor, the chief medical
17 officer for the hospital, says, "That's a good target
18 date. I do think the board needs to okay the final
19 decision to reopen after we see what the situation is
20 closer to that date."

21 Have I read those two e-mails correctly?

22 A. Yes.

23 Q. Okay. So by this point in time,
24 September 27th, there was already beginning to be
25 discussion about when St. Thomas Neurosurgical would

Page 131

1 to everyone an e-mail that she got from a chief
2 information officer or the communications and media
3 relations person with the Department of Health;
4 correct?

5 A. Yes.

6 Q. And this is Saturday, September 29th and
7 the last line of Mr. McMillin's e-mail says, "Let me
8 know when you hear from your folks about
9 identification and the release or being at the press
10 briefing."

11 Have I read that correctly?

12 A. Yes.

13 Q. So am I correct in understanding that by
14 that point in time, Howell Allen Clinic still did not
15 feel comfortable having either its name or St. Thomas
16 Neurosurgical's name released to the public?

17 A. I don't see that in these e-mails, so it's
18 hard for me to make a conclusion on that.

19 Q. Well, in the e-mail that's being forwarded,
20 it looks like she's attaching a revised draft of a
21 press release, is that correct, which I think is on
22 the next page?

23 A. Yes.

24 Q. And I don't see that St. Thomas's name or
25 Howell Allen Clinic's name is mentioned in the press

Page 130

1 reopen; correct?

2 A. Yes.

3 Q. And Dr. Batchelor was saying, well, that's
4 not really going to be Dr. Culclasure's decision.
5 That's going to be a decision that has to be made by
6 the St. Thomas Neurosurgical board. Is that a fair
7 way for me to characterize this?

8 A. Yes.

9 MR. HOFFMAN: Objection to form.

10 Q. (By Mr. Nolan) Okay. Was Dr. Culclasure
11 eager to get the clinic open again?

12 MR. TARDIO: Object to the form.

13 Q. (By Mr. Nolan) Let me rephrase the
14 question.

15 Did you perceive that Dr. Culclasure was
16 eager to get the clinic open up again?

17 A. No.

18 Q. Were you eager to get it open again?

19 A. Absolutely not.

20 Q. Okay. If we go to Page 10, we see at the
21 top an e-mail from Ms. Climer to -- one, two, three,
22 four, five, six, seven -- eight people -- eight to ten
23 people; correct?

24 A. Yes.

25 Q. All right. And she's apparently forwarding

Page 132

1 release, the draft press release at that point.

2 MR. HOFFMAN: Objection to form.

3 Q. (By Mr. Nolan) Am I right about that?

4 A. Yes.

5 Q. All right. So this is what Ms. Climer says
6 in her e-mail. She says "All, attached is the latest
7 update of the holding statement proposed by the
8 state."

9 What does that mean, holding statement?

10 A. I don't know.

11 Q. Okay. It says, "Their PIO" -- I assume
12 that means public information officer -- "Woody
13 McMillin is asking about whether the latest events in
14 North Carolina would change your opinion as to whether
15 to include the name of the facility either in the
16 holding statement or in an eventual press briefing."

17 Now, what are the events in North Carolina?

18 MR. TARDIO: George, you misread
19 that. You said "your" instead of "our."

20 MR. NOLAN: I'm sorry. Let me -- let
21 me go do it again.

22 Q. (By Mr. Nolan) She says, "All, attached is
23 the latest update of the holding statement proposed by
24 the state. Their PIO, Woody McMillin, is asking about
25 whether the latest events in North Carolina would

Page 133

1 change our opinion as to include -- as to whether to
2 include the name of the facility either in the holding
3 statement or an eventual -- in an eventual press
4 briefing."

5 So have I read that correctly so far?

6 A. Yes.

7 Q. All right. And who is "our"?

8 A. I don't know.

9 Q. Okay. Would "our" be the -- the -- the --
10 the collective group, this joint venture or
11 partnership that existed between Howell Allen Clinic
12 and St. Thomas?

13 MR. HOFFMAN: Objection to form.

14 THE WITNESS: I don't know.

15 Q. (By Mr. Nolan) Would "our" be everybody
16 that's listed on this e-mail?

17 A. I don't know.

18 Q. Okay. But nevertheless, we do see here
19 that there is a group of several people, several of
20 whom are not on the St. Thomas Neurosurgical board,
21 that are collaborating about what should be said to
22 the general public about this very unfortunate event.
23 Is that true?

24 A. Their names are on the e-mail.

25 Q. Okay. And so you knew that all these

Page 135

1 MR. TARDIO: Object to the form.

2 THE WITNESS: We spoke with a PR firm
3 at some point during this process, but I'm
4 not sure when that idea came about or when
5 that meeting was.

6 Q. (By Mr. Nolan) Now, I believe it's been
7 very clearly established that almost all of the
8 epidural steroid injection patients who received shots
9 at St. Thomas Neurosurgical were referred there from
10 Howell Allen Clinic; correct?

11 A. Correct.

12 Q. So Howell Allen Clinic had an ongoing
13 physician/patient relationship with those people that
14 it referred to St. Thomas Neurosurgical for those
15 shots; correct?

16 A. Correct.

17 Q. Did Howell Allen Clinic tell the nursing
18 staff, its own nursing staff about what was happening
19 over at St. Thomas Neurosurgical so that if patients
20 called Howell Allen Clinic because they felt sick,
21 those nurses would know to tell them to go to St.
22 Thomas or some other emergency room and get checked?

23 A. No. I think that was a mistake that I made
24 early on is I forgot to include them in an e-mail that
25 I sent about questions from patients. It was just an

Page 134

1 people were collaborating together because your name
2 was in the mix also; correct?

3 A. I don't know that I would say I knew that
4 because I don't even know who Kay Fox at Jarrard, Inc.
5 is. So I would imagine I probably looked at it and
6 saw some of the names that I recognized, but others
7 that I didn't know who they were.

8 Q. Okay. Why was Dr. Culclasure the medical
9 director of St. Thomas Neurosurgical not included in
10 this e-mail chain?

11 A. I don't know.

12 Q. And why didn't St. Thomas Neurosurgical if,
13 in fact, it really is a separate entity -- why didn't
14 it take charge of trying to shape the public
15 perception and communicate with the public about what
16 had happened at its facility?

17 MR. HOFFMAN: Objection to the form.

18 THE WITNESS: Because I didn't have
19 any experience in dealing with the public.

20 I had to ask for help.

21 Q. (By Mr. Nolan) Did you consider hiring a
22 PR firm from the coffers of St. Thomas Neurosurgical
23 rather than form this -- I don't know what we would
24 call it -- a crisis group that we see reflected in
25 this e-mail?

Page 136

1 oversight on my part that I failed to notify them.

2 Q. Okay. So if we look at the e-mail, which
3 is on Page 12, we see here that there's a woman named
4 Jaime Frazier. What type of personnel is Ms. Frazier?

5 A. She's a nurse practitioner for the group.

6 Q. And she appears to be kind of fussing about
7 the fact -- or she's upset about the fact that she was
8 not told about the meningitis outbreak sooner; is that
9 correct?

10 A. Correct.

11 Q. During this period of time, were you
12 concerned about trying to keep a lid on this thing, so
13 to speak?

14 MR. TARDIO: Object to the form.

15 THE WITNESS: No.

16 Q. (By Mr. Nolan) Okay. Let me ask you to
17 turn to Page 14. Okay. Now, this appears to be an
18 e-mail from Amanda Anderson to Rebecca Climer with a
19 copy to Joe Hagan. You see that?

20 A. Yes.

21 Q. And it appears to attach a draft of a
22 STOPNC letter, which we find on the next page; is that
23 right?

24 A. If this was attached to there, then yes.

25 Q. Okay. Do you know -- do you know why it

Page 137

1 is -- now -- now, Ms. Anderson is listed as a
2 communications coordinator with St. Thomas Health. We
3 know Ms. Climer is the chief communications and
4 marketing officer. Do you know why those folks would
5 be collaborating about what St. Thomas Neurosurgical
6 should say in a letter to its patients?

7 A. I think it goes back to what I indicated
8 earlier, is that I had no experience at all in this
9 type of event and asked for their help in every aspect
10 of patient notification.

11 Q. Well, why not let the medical director of
12 the clinic decide what should be said to patients
13 regarding this problem that was developing that could
14 impact their health greatly?

15 A. I don't know if he reviewed this or not.

16 Q. Okay. Well, why was it necessary for -- I
17 mean, this letter wasn't going to go to the media, was
18 it?

19 A. No. I think this -- this was just going to
20 the patients.

21 Q. Okay. So why -- why is it that these two
22 people in the St. Thomas Health communications
23 department are reviewing this letter that's supposed
24 to go to patients?

25 A. I don't know. I would guess to make sure

Page 138

1 that whatever information that needs to be in there
2 was included, that we didn't leave anything out.

3 Q. Okay. All right. Let's go to Page 16. So
4 on Page 16, we have an e-mail from Ms. Climer to
5 several people including you, copied to Berry Holt and
6 Dawn Rudolph. Do you see that in the middle of the
7 page?

8 A. Yes.

9 Q. And it appears that Ms. Climer wants to
10 know how St. Thomas Neurosurgical should be described.
11 Do you see that?

12 A. Yes.

13 Q. All right. And why was Ms. Climer
14 inquiring about how she should describe St. Thomas
15 Neurosurgical?

16 MR. GIDEON: Objection to form.

17 THE WITNESS: I don't know.

18 Q. (By Mr. Nolan) Okay. And in response, you
19 say, "Our leadership wants to remove the statement not
20 germane to the discussions at this point in this
21 investigation."

22 Why did you say that to Ms. Climer?

23 A. I'm not sure. I'm not sure what the
24 document was -- what document she was referring to.

25 Q. Yeah, and that was my next question.

Page 139

1 What -- what statement are you asking this be removed
2 from?

3 A. I don't know.

4 Q. Was this some sort of a joint press release
5 that would be coming out?

6 A. I don't know.

7 Q. So at that point in time, was your
8 leadership -- referring to Howell Allen Clinic's
9 leadership -- continuing in its desire that it and St.
10 Thomas Neurosurgical remain anonymous?

11 A. I'm not sure. I'm not sure if our
12 leadership is the STOPNC board or the Howell Allen --

13 Q. Okay.

14 A. -- physicians.

15 Q. But one of the two was continuing in its
16 concern that that particular clinic remain anonymous;
17 is that correct?

18 A. I think if I remember correctly, anonymous
19 to the public, but certainly well described in and
20 documented to the patients involved.

21 Q. All right. And then on Page 17, it appears
22 a continuation of the e-mail string in which Berry
23 Holt weighs in and he says, "I assume the point was to
24 avoid the impression that the center is actually a
25 department or unit of St. Thomas Hospital. How about,

Page 140

1 quote, The center is an ambulatory neurosurgical
2 surgery center licensed by the state of Tennessee and
3 housed on the St. Thomas Hospital campus," closed
4 quote.

5 And then apparently after you received
6 that, you respond, "Our group supports this revised
7 statement from Berry."

8 Did I read that correctly?

9 A. Yes.

10 Q. Okay. And so why did your group support
11 that revised statement from Mr. Holt?

12 A. I'm not sure what the document was
13 referring to, but I assume that we thought that it
14 described the center's location.

15 Q. Okay. Let's look at Page 19. Here we have
16 an e-mail string dated October the 1st of 2012. Was
17 that the date of the press conference?

18 A. That identified NECC?

19 Q. I --

20 A. That press conference, is that --

21 Q. I'm talking the first press conference that
22 made the outbreak known to the public.

23 A. I'm not -- I was thinking October the 1st
24 was when they had identified NECC as the provider of
25 the steroid.

1 Q. Well, how many press conferences do you
2 recall?

3 A. That was the most important one because it
4 was when -- it really identified where the problem was
5 from.

6 Q. All right.

7 A. All the other ones really didn't --

8 Q. Was there a --

9 A. -- add up.

10 MR. GIDEON: He wasn't finished.

11 Q. (By Mr. Nolan) Sorry about that.

12 A. No, go ahead.

13 Q. I apologize. Go ahead.

14 A. No, go ahead.

15 Q. Was there a press conference in which the
16 fact of the meningitis outbreak was first revealed to
17 the public?

18 A. I don't know if -- I don't know if the -- I
19 know that October the 1st was when they identified
20 that steroid is the problem, but I'm not sure if
21 that's the first press conference they had or if they
22 had one at the end of the previous week.

23 Q. Well, in any event, Ms. Climer appears to
24 be reporting to this e-mail group that's formed about
25 what happened at the press conference. You see that?

1 A. Yes.

2 MR. HOFFMAN: Object to form.

3 Q. (By Mr. Nolan) And then she mentions in
4 the last sentence of the first paragraph of her e-mail
5 at the bottom, "The reporter from Channel 5, Heather
6 Graff, knows that she has to stay off the property."

7 Apparently she's going to go out and take
8 some pictures of the hospital. Do you see that
9 sentence I'm referring to?

10 A. "The reporter from Channel 5, Heather
11 Graff, knows that she has to stay off property."

12 Q. Right. And then you respond, "Channel 5's
13 reference that the state shut us down is not accurate
14 and it -- and was not presented that way at the press
15 conference." Did I read that correctly?

16 A. Yes.

17 Q. Okay. And then Ms. Climer responds, "I
18 know. We've already contacted them about it, both the
19 news director and the reporter. She has sent a tweet
20 and online message correcting it. It is now corrected
21 online as well."

22 Did I read that correctly?

23 A. Yes.

24 Q. Okay. And so when you sent an e-mail to
25 Ms. Climer about this problem with Channel 5, what did

1 you expect her to do about that problem?

2 A. I assume let Heather Graff know that it was
3 not accurate, that I didn't -- all I was telling her
4 is the way it was presented in the report was not
5 accurate. I didn't ask her to do anything.

6 Q. And when she says, "Channel 5's reference
7 to this -- that the state" -- excuse me. When you
8 said, "Channel 5's reference that the state shut us
9 down," who is "us"?

10 A. STOPNC.

11 Q. Okay. So is it correct that after this
12 outbreak, St. Thomas Neurosurgical relied upon St.
13 Thomas Health to manage the media and PR issues that
14 it was facing?

15 MR. HOFFMAN: Object to the form.

16 THE WITNESS: I think that I would --

17 I guess I would phrase it as I asked St.

18 Thomas to help us with the media, PR, any
19 type of report -- reporting that we had to
20 do just because I had absolutely no
21 experience dealing with this kind of event
22 at all.

23 Q. (By Mr. Nolan) And did you also think to
24 yourself, well, because St. Thomas Neurosurgical
25 shares a name with St. Thomas Health, we -- we could

1 be construed as St. Thomas Health's agents, so we need
2 to let St. Thomas Health quarterback the public
3 perception stuff as opposed to us taking that role on
4 ourselves?

5 MR. GIDEON: Object to the form.

6 MR. HOFFMAN: Objection to form.

7 THE WITNESS: No.

8 Q. (By Mr. Nolan) Did the patients, to your
9 knowledge, of St. Thomas Neurosurgical know where the
10 steroids that they had received came from?

11 A. I don't know.

12 Q. And so do you have any reason to believe
13 that they -- that they knew when they received the
14 shots that these steroids came from NECC?

15 A. I don't know.

16 Q. All right. Let's turn to Page 20. This is
17 an e-mail from Dr. Lanford to you with a copy to
18 Ms. Climer; correct?

19 A. Yes.

20 Q. What is this?

21 A. I don't know. Something that we released
22 to somebody, but I'm not sure who that went to.

23 Q. All right. Let's go to Page 21. At the
24 bottom of that page, we have an e-mail from you to
25 several people dated October the 2nd; correct?

1 A. Correct.
 2 Q. All right. And you say as follows: "As
 3 much as we try to be noble throughout this ordeal, I'm
 4 concerned that our response when tempered with the
 5 state's control has resulted in making our center look
 6 like the bad guy."

7 What do you mean by "our center"?

8 A. STOPNC.

9 Q. Okay. And so who is "our"? I know who the
 10 center is, but who is "our"?

11 A. I mean STOPNC. That's who I'm referring
 12 to.

13 Q. Okay. And then you say, "Even though we
 14 should be treated as the pharmacy who gave out bad
 15 Tylenol" --

16 MR. GIDEON: You didn't read the
 17 whole sentence.

18 MR. NOLAN: Right. Let me start
 19 again.

20 Q. (By Mr. Nolan) "Even though we should be
 21 treated as the pharmacy who gave out the bad Tylenol,
 22 these reports make us look guilty."

23 Did I read that sentence correctly?

24 A. Yes.

25 Q. What did you mean by that?

1 gave out the bad Tylenol," why did you pick that
 2 example, the bad Tylenol?

3 A. I don't -- I don't know. I guess because
 4 we had received a bad product from somebody and that
 5 was causing a lot of people a lot of pain and that was
 6 clearly frustrating me and hurting me to deal with it.
 7 I think that the last sentence in that fourth
 8 paragraph kind of just will tell you how I feel about
 9 the whole situation.

10 "The real truth is that STOPNC provides
 11 great care to patients and when these patients are
 12 hurting, it hurts all of us." And I was referring to
 13 our group, our patients, everybody that worked for us.
 14 It was a painful experience.

15 Q. Do you think it would be fair for St.
 16 Thomas Neurosurgical to stand behind the product that
 17 it delivered to patients if the manufacturer of that
 18 product becomes insolvent?

19 MR. GIDEON: Objection to the form.

20 Q. (By Mr. Nolan) You can answer.

21 A. I don't know.

22 Q. Okay. Well, do you think that would be the
 23 right thing to do, if NECC is unable to stand behind
 24 that product, do you think it would be the right thing
 25 to do for St. Thomas Neurosurgical to do so?

1 A. I think I was frustrated at that point and,
 2 you know, we -- we provide excellent care to patients
 3 and I felt like the media reports were portraying us
 4 as being the guilty party.

5 Q. And so did you feel like you should be
 6 should be treated the same as a pharmacy that sold bad
 7 Tylenol that was manufactured by someone else?

8 A. No, I think that was just me being -- being
 9 frustrated and upset and reacting to the situation. I
 10 think the next sentence is how I really felt about the
 11 whole situation, that we had patients suffering and it
 12 appeared to be something that we had done.

13 Q. And then at the end, you say, "At what
 14 point can we point the finger at the pharmacy,"
 15 question mark. Do you see that?

16 A. Yes.

17 Q. What did you mean by that?

18 A. I guess they hadn't announced NECC yet.

19 Q. So would it be fair to say that at this
 20 point you were eager to shift the focus of the public
 21 discussion away from St. Thomas Neurosurgical and
 22 toward NECC?

23 A. Yes.

24 Q. Now, when you said in the first paragraph,
 25 "Even though we should be treated as the pharmacy who

1 MR. GIDEON: Objection.

2 Q. (By Mr. Nolan) You can answer.

3 A. You're asking me if I think we should stand
 4 behind a company that produced a bad product that hurt
 5 our patients, I'm supposed to support that? Is that
 6 what you're asking me?

7 Q. No. That's not what I'm asking you at all.

8 MR. GIDEON: Yeah, it is.

9 THE WITNESS: That's exactly what
 10 you're asking me.

11 Q. (By Mr. Nolan) No, it's not.

12 A. You're asking me if I would stand behind a
 13 company that went insolvent that hurt our patients.

14 Q. No, I'm asking you would you stand behind
 15 the product that you injected into patients, that you
 16 delivered to the patients if the manufacturer --

17 A. I'm not going to answer that question.

18 Q. Why not?

19 A. Because it embarrasses me that you would
 20 ask me that question.

21 Q. So would I take it, then, that you don't
 22 think that there should be any reason that St. Thomas
 23 Neurosurgical should be required to stand behind the
 24 product if the manufacturer of the product becomes
 25 insolvent?

Page 149

1 MR. GIDEON: Just a second. That's
2 not a question to him about facts. He's
3 not been qualified as an expert. You're
4 asking him for a legal conclusion to share
5 his agreement or lack of agreement with one
6 of your closing arguments. I don't think
7 it's proper discovery and I object to it.
8 He's already answered it so that's another
9 basis for the objection.

10 So do you have a new answer to the
11 same --

12 THE WITNESS: No.

13 MR. GIDEON: -- question that's been
14 asked four times?

15 THE WITNESS: No.

16 MR. GIDEON: Okay.

17 MR. TARDIO: I just got an e-mail. I
18 think that the phone may have cut out.

19 Can the people on the phone hear us?
20 May have dropped the line.

21 MR. NOLAN: Why don't we go off the
22 record.

23 MR. GIDEON: What's the time?

24 VIDEOGRAPHER: We're off the record.
25 This is the end of Tape No. 3 and the time

Page 151

1 injections at that facility; correct?

2 A. No. We closed because there were sick
3 patients and then I think our answer to patients in
4 the beginning was that there were equipment issues
5 because we didn't have information to share with
6 anybody.

7 Q. But you would acknowledge that the
8 statement that you were having equipment issues was
9 not a truthful statement; correct?

10 A. I believe that's correct. I don't think
11 there was any equipment issues.

12 Q. At any point were you interviewed by the
13 FBI in connection with any of this?

14 A. No.

15 Q. What about the U.S. Attorney's Office in
16 Boston?

17 A. No.

18 Q. Let me ask you to refer back to Page 7 of
19 our group of e-mails, if you would.

20 MR. REHNQUIST: What page, George?

21 MR. NOLAN: Seven. The seventh page.

22 Q. (By Mr. Nolan) And so this e-mail -- in
23 this e-mail you make, as we've discussed, reference to
24 the advise that you received from SVMIC about not
25 making a comment. Do you see that?

Page 150

1 is 1:59 p.m.

2 (A recess was taken.)

3 VIDEOGRAPHER: Here begins Tape No. 4
4 in the deposition of Scott Butler. We're
5 back on the record and the time is
6 2:13 p.m.

7 Q. (By Mr. Nolan) Mr. Butler, let me ask you
8 to refer back to Exhibit No. 74, which was the e-mail
9 that was an example of a fact that St. Thomas
10 Neurosurgical told patients who were scheduled to have
11 procedures during the week of September the 24th that
12 the clinic was having equipment problems that was
13 causing the clinic to cancel patient appointments.

14 Do you remember that line of our
15 discussion?

16 A. Yes.

17 Q. All right. And so what equipment issues
18 caused St. Thomas Neurosurgical to cancel patients?

19 A. I think it was just a -- a line to tell
20 patients that we were closed. I don't think there was
21 any -- I don't think there was any true equipment
22 issues.

23 Q. Okay. So that -- so you actually canceled
24 patients because you knew that some people apparently
25 had a life-threatening disease after receiving

Page 152

1 A. Yes.

2 Q. And so when did St. Thomas Neurosurgical
3 first contact SVMIC about this event?

4 A. Sometime that week. I'm not sure when.

5 Q. All right. So sometime before September
6 the 28th; correct?

7 A. Correct.

8 Q. Why did it do that?

9 A. I think because we didn't know what was
10 going on and wanted to make sure that they were aware
11 that something was going on with our patients.

12 Q. At that point in time were you concerned
13 about potential liability with St. Thomas
14 Neurosurgical?

15 A. No.

16 Q. Then why contact SVMIC?

17 MR. GIDEON: He's already answered
18 the question. Object to the form.

19 Q. (By Mr. Nolan) When was the decision made
20 that St. Thomas Neurosurgical's name should be
21 released?

22 A. I don't remember.

23 Q. Who made that decision?

24 A. I don't remember.

25 Q. How was the decision made?

Page 153

Page 155

1 A. I don't know.

2 Q. All right. Let me ask you to turn to Page
3 30, if you would, at STOPNC_005704. Now, at the
4 bottom, there's an e-mail from Rebecca Climer to
5 several different people that appears to contain some
6 statistical information about the outbreak. Do you
7 see that?

8 A. Yes.

9 Q. Okay. And then in the middle we have an
10 e-mail from Dr. Schatzlein to several people where he
11 says, "I wonder if we need a news conference to
12 clarify that hospital has -- was never involved and
13 the ASC was immediately closed. Local news keeps
14 referring to, quote, the meningitis scare at St.
15 Thomas, closed quote, and we should call them out on
16 this."

17 Have I read that correctly?

18 A. Yes.

19 Q. Okay. And then you forwarded this e-mail
20 to Dr. Lanford with the one word that says,
21 "Crickets." Do you see that?

22 A. Yes.

23 Q. And what did you mean by that?

24 A. Just that nobody responded. Quiet.

25 Q. Let's go to Page 34, if we could. Is this

1 in the letter that St. Thomas Neurosurgical would be
2 sending to patients?

3 MR. HOFFMAN: Object to form.

4 THE WITNESS: I don't know.

5 Q. (By Mr. Nolan) And does it appear that the
6 next two pages are the two versions of the letter that
7 are -- is being discussed by Ms. Climer?

8 A. Is this the same letter?

9 Q. It's much the same. The main difference I
10 see is that one on Page 36 has a paragraph at the
11 bottom that mentions the Tennessee Department of
12 Health, whereas the one on Page 35 does not contain
13 that paragraph. And if you look back at Ms. Climer's
14 e-mail --

15 A. I see that.

16 Q. -- she's referring to two versions, one of
17 which references the Department of Health and one of
18 this doesn't. Do you see that?

19 A. Yes.

20 Q. So it does appear that these two draft
21 letters are what is -- what Ms. Climer is discussing
22 in the previous e-mail; is that true?

23 A. Yes.

24 Q. Okay. All right. And then let's go to
25 Page 38 and 39. What are those two pages?

Page 154

Page 156

1 an e-mail exchange that involved you and Rebecca
2 Climer regarding a letter that would be sent to
3 patients?

4 A. Okay.

5 Q. Is that what this appears to be?

6 A. Yes.

7 Q. Okay. And so it appears that Ms. Climer is
8 keeping several people in the loop about what's going
9 to be said in this letter including everybody that
10 she -- she ccs and sends her e-mail of October 10th at
11 12:10 p.m. to. Do you see that?

12 A. Yes.

13 Q. All right. Why were all those people
14 involved in reviewing the letter?

15 A. The only ones that I know are the board
16 members that are on the e-mail and Dr. Culclasure.

17 Q. All right. So --

18 A. I don't know who Dianne Conlee is.

19 Q. Okay.

20 A. I think we established that Amanda worked
21 for Rebecca.

22 Q. All right. You know who Berry Holt is;
23 right?

24 A. Yes.

25 Q. Why was St. Thomas Health's lawyer involved

1 A. Looks like a press statement.

2 Q. So it's a press statement. Was it drafted
3 by Mr. Cline?

4 A. Yes.

5 Q. Okay. And he's one of the lawyers for
6 Howell Allen Clinic and St. Thomas Neurosurgical; is
7 that correct?

8 A. Yes.

9 Q. Okay. And he was sending this proposed
10 press statement to several different people including
11 Ms. Climer as well as Berry Holt and Dawn Rudolph and
12 others; correct?

13 A. Yes.

14 Q. Do you know why he was sending that to
15 those different people?

16 A. I don't know.

17 Q. Okay. And the press release appears to be
18 a release that would be put out on behalf of St.
19 Thomas Outpatient Neurosurgical Center; correct?

20 A. Yes.

21 Q. Okay. And do you know why the lawyer for
22 that entity would be giving input from Berry Holt or
23 Dawn Rudolph, for example, on what should be contained
24 in that entity's press release?

25 A. I don't know.

Page 157

1 Q. Okay. Okay. Let's go to Page 42. This is
2 an e-mail exchange between you and Amanda Anderson; is
3 that true?

4 A. Yes.

5 Q. Okay. And she's apparently indicating that
6 a newspaper in Kentucky has requested contact
7 information for St. Thomas Neurosurgical and -- and
8 she referred that reporter to you. Is that the gist
9 of this e-mail exchange or her --

10 A. Yes.

11 Q. -- e-mail to you, in any event?

12 A. Yes.

13 Q. And then you respond and you say, "Going
14 forward, just send them this statement. That's all
15 I'm doing." And then we have another copy of the
16 statement that Mr. Cline drafted. Do you see that?

17 A. Yes.

18 Q. Okay. So were you telling Ms. Anderson
19 simply to forward that particular statement to the
20 reporter in Kentucky?

21 A. Correct.

22 Q. All right. And then on Page 44, we have
23 Ms. Anderson responding. She says, "Hey, Scott, media
24 are finding it difficult to delineate the statements
25 from St. Thomas Hospital when I or Rebecca provide

Page 159

1 the only person who is going to ask
2 questions on behalf of PSC?

3 MR. NOLAN: Well, Mike Chalos was
4 also designated, but he had to leave. So
5 my answer is currently, yes.

6 MR. GIDEON: Okay. Are you going to
7 ask some questions?

8 MR. CLAYTON: I am not asking any
9 questions on behalf of PSC.

10 MR. GIDEON: Anybody who intends to
11 speak on behalf of PSC today?

12 MR. NOLAN: No.

13 MR. GIDEON: Do you have any
14 questions?

15 MR. HOFFMAN: I have no questions at
16 this time.

17 MS. CARRICK: I have just a few.

18 MR. REHNQUIST: We might have a few,
19 but we want to confer for a moment, if you
20 don't mind. Not many.

21 MR. GIDEON: All right. Well,
22 whoever is next, if you just have a few.
23 Jim, do you need some time to decide what
24 you're going to do?

25 MR. REHNQUIST: Yes, what and

Page 158

1 them. It would be best if you continue to send out
2 these STOPNC statements specifically."

3 Did I read that correctly?

4 A. Yes.

5 Q. Did it appear to you at that time that St.
6 Thomas Health was beginning to try and distance itself
7 from STOPNC?

8 MR. HOFFMAN: Objection to form.

9 THE WITNESS: I don't know.

10 Q. (By Mr. Nolan) Can you tell us what Page
11 46 is?

12 A. It looks like it was something I e-mailed
13 myself.

14 Q. Was this Internet research that you were
15 doing when you were trying to figure out what St.
16 Thomas Neurosurgical should say when questioned about
17 why it purchased material from a compounded pharmacy?

18 A. No, I don't know if somebody sent that to
19 me. I don't know where that came from.

20 Q. Okay.

21 MR. NOLAN: That's all the questions
22 I have at this time.

23 Who's next?

24 MR. GIDEON: We didn't do this at the
25 beginning of the deposition today. Are you

Page 160

1 whether.

2 MR. GIDEON: Okay. You want to let
3 her go ahead?

4 MR. REHNQUIST: Sure. That's fine.

5 MR. GIDEON: Would you come over here
6 where George is seated so the witness can
7 see you.

8 MS. CARRICK: Yes.

9 EXAMINATION

10 BY MS. CARRICK:

11 Q. Good afternoon.

12 A. Hi.

13 Q. My name is Megan Carrick. I represent
14 Speciality Surgery Center and Dr. Lister, who are out
15 in Crossville. As I indicated, I just have a few
16 questions.

17 You indicated during your testimony that
18 Dr. Culclasure called you on September 19th and
19 informed you that a patient who had an injection at
20 STOPNC was being treated at Vanderbilt with an
21 infection; is that correct?

22 A. Yes.

23 Q. And I understood that you-all met with the
24 state just two days later on the 21st, which was the
25 Friday of that week; is that correct?

Page 161

1 A. Yes.
2 Q. What is your understanding of how and when
3 the state became alerted to the fact that there was
4 some sort of issue going on?
5 A. I'm not sure if the state was involved in
6 the phone call on Thursday with Dr. Culclasure. I
7 don't know who he -- he heard there were more patients
8 who were sick on that Thursday, the 20th, and I'm not
9 sure if -- I think Vanderbilt, who was the first
10 patient communicated with the state. And then I don't
11 know if the Thursday patient, whatever happened,
12 wherever that patient -- I think it was at St. Thomas
13 communicated with the state, and the state didn't come
14 meet with us on Friday. They came and did an
15 inspection on Friday.
16 Q. Okay. So to your knowledge, it was either
17 Vanderbilt Hospital or St. Thomas Hospital that
18 initially made the alert to the state --
19 A. Yes.
20 Q. -- that there was an issue?
21 A. Yes.
22 Q. All right.
23 MS. CARRICK: That's all of my
24 questions.
25 THE WITNESS: Okay.

Page 162

1 MR. GIDEON: Watch the clip.
2 MR. REHNQUIST: Give me about less
3 than five minutes.
4 EXAMINATION
5 BY MR. REHNQUIST:
6 Q. Good afternoon, Mr. Butler. My name is Jim
7 Rehnquist. I represent the defendant in this case
8 called UniFirst Corporation. Yesterday Ms. Schamberg
9 mentioned several other anesthesiologists who did
10 injections at STOPNC. Do you remember that?
11 A. Yes.
12 Q. I'm not sure we got the names right, but I
13 think one of them was Rachel Rome?
14 A. Yes.
15 Q. Was there a Steve Nichols?
16 A. Dickerson.
17 Q. Steve Dickerson. Someone who's name is
18 Carrero?
19 A. Yeah. I think it's Arthur Carrero.
20 Q. And I think she said for a time there might
21 have been someone named Tim Arney?
22 A. Correct.
23 Q. Are there any others that you can think of?
24 A. No. And Arney passed away within the last
25 year or so. He had cancer and died.

Page 163

1 Q. Okay. Sorry to hear that. Were those
2 other anesthesiologists also Howell Allen employees?
3 A. No.
4 Q. Do you know if they were employees of
5 someone else?
6 A. I believe they were employees of
7 Comprehensive Pain Specialists.
8 Q. Is that also an ambulatory surgery center?
9 A. It's just a pain group. They do anesthesia
10 and pain management.
11 Q. How were those other anesthesiologists
12 compensated by Howell Allen for the services they
13 performed?
14 A. They weren't. They did all their own
15 billing for professional fees.
16 Q. So if a patient comes into STOPNC and gets
17 an injection, they would receive a -- they would
18 either receive a bill or whatever claim they had would
19 be handled within with a payor by Comprehensive Pain
20 Specialists, as far as you know?
21 A. Yes.
22 Q. Were the intake procedures or recordkeeping
23 at STOPNC any different for the work that those
24 anesthesiologists did as opposed to Dr. Culclasure?
25 A. Not to my knowledge.

Page 164

1 Q. Did they pay fees to STOPNC for the
2 privileges of using the STOPNC facilities?
3 A. No.
4 Q. Did they make any payments at all to
5 STOPNC?
6 A. No.
7 Q. Did they make any payments to Howell Allen?
8 A. No, they -- I think the only fee they would
9 have paid is just a simple -- might have been a
10 credentialing application fee of some kind, you know,
11 25 or \$50, but I don't -- they didn't pay any fees to
12 STOPNC or Howell Allen.
13 Q. Were they used by STOPNC on more or less an
14 overflow situation if Dr. Culclasure was backed up?
15 A. No. We tried to use them as often as we
16 could. We didn't have enough work -- we didn't have
17 enough -- we had more than enough work for
18 Dr. Culclasure so we needed other physicians to come
19 in, and those were doctors that Dr. Culclasure had
20 worked with, was comfortable with, knew their work was
21 high quality. So he asked them to apply for
22 privileges.
23 Q. Okay. And he -- okay. And by privileges,
24 what do you mean?
25 A. Just privileges at the surgery center to

Page 165

1 work there.

2 Q. And Dr. Culclasure, as the medical director
3 of STOPNC, had the authority to make that decision?

4 A. All he did was just ask them to get
5 privileges there. So then they would fill out an
6 application and that would go through the -- the
7 board.

8 Q. And Howell Allen -- Howell Allen is
9 organized as a professional corporation under
10 Tennessee law in -- I gather that structure continued
11 from the prior entity, Neurological Surgeons, PC, I
12 believe?

13 A. Correct.

14 Q. Is Tina Sullivan a current employee of
15 Howell Allen?

16 A. No.

17 Q. Do you know where she works?

18 A. I don't know. She's still in Nashville,
19 but I'm not sure where she works.

20 Q. She was the facility -- she was Debra
21 Schamberg's predecessor as the STOPNC facility
22 director; correct?

23 A. Correct.

24 Q. And I believe Debra became the facility
25 director in May of 2009 or thereabouts?

Page 166

1 A. Yes.

2 Q. And when Debra came on as the facility
3 director, did Tina stay within the Howell Allen
4 family, so to speak, after that?

5 A. No. I think she stayed around maybe for a
6 little while to work with Debra, but I don't -- she
7 didn't stay. She left for another job, so I don't
8 know if she did -- if Debra spent any time with her or
9 not.

10 Q. So she left STOPNC for another job --

11 A. Correct.

12 Q. -- voluntarily?

13 A. Yes.

14 Q. Do you know what the immediate next job
15 that she went to after leaving STOPNC was?

16 A. I don't know. I -- I don't know.

17 Q. Who owned or leased the office space at
18 which STOPNC operated?

19 A. I think the lease was -- I'm not sure if --
20 it's either all under Howell Allen and we -- the cost,
21 you know, STOPNC pays for the 9th floor. Howell Allen
22 pays for the 8th floor. I don't think it's two
23 separate leases. I think it's just one lease.

24 Q. And the name of the tenant on the lease is
25 Howell Allen, PC?

Page 167

1 A. Either Howell Allen or Neurological
2 Services because we've been in that office for --
3 prior -- before the name change and continue to be in
4 that office now.

5 Q. And the financial report that you were
6 shown earlier has an expense for STOPNC of -- I
7 believe it was something like rentals and repairs. Do
8 you remember that?

9 A. Uh-huh (affirmative).

10 Q. And that would have been what was allocated
11 to STOPNC for the -- their portion of the lease?

12 A. Yes, if it went into that category. Yes.

13 MR. REHNQUIST: I've got nothing
14 else. Thanks.

15 THE WITNESS: Thank you.

16 MR. GIDEON: George, do you have any
17 followup?

18 MR. NOLAN: I do.

19 FURTHER EXAMINATION

20 BY MR. NOLAN:

21 Q. If you look at the large collective exhibit
22 that we spent some time with on Page 41. There's an
23 e-mail exchange between you and Mr. Polkow in which he
24 inquires about a report from the state that apparently
25 he was expecting and you were expecting. Do you see

Page 168

1 that?

2 A. Yes.

3 Q. And did the state ever provide such a
4 report?

5 A. I don't know. They would have given that
6 to Debra. I don't -- I don't remember if we got a
7 report or not.

8 Q. Okay.

9 MR. NOLAN: That's all I have.

10 MR. GIDEON: Anybody else have any
11 followup? Any questions by St. Thomas?

12 MR. HOFFMAN: No.

13 MR. GIDEON: Anybody have any
14 additional questions at all? Jim, nothing?

15 MR. REHNQUIST: No thanks.

16 MR. GIDEON: That's it.

17 VIDEOGRAPHER: This conclude?

18 MR. GIDEON: Yes. Read and sign.

19 VIDEOGRAPHER: This concludes the
20 deposition. This is the end of Tape No. 4.
21 We're off the record and the time is
22 2:44 p.m.

23 (Deposition concluded at 2:44 p.m.)
24
25

DISCLOSURE

Pursuant to Article 10.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia which states: "Each court reporter shall tender a disclosure form at the time of the taking of the deposition stating the arrangements made for the reporting services of the certified court reporter, by the certified court reporter, the court reporter's employer or the referral source for the deposition, with any party to the litigation, counsel to the parties, or other entity. Such form shall be attached to the deposition transcript," I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Discovery Litigation Services, LLC. Discovery Litigation Services, LLC was contacted to provide court reporting services for the deposition. Discovery Litigation Services, LLC will not be taking this deposition under any contract that is prohibited by O.C.G.A. 9-11-28(c).

Discovery Litigation Services, LLC has no contract/agreement to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Discovery Litigation Services, LLC will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Blanche J. Dugas
CCR No. B-2290

CAPTION

The Deposition of SCOTT BUTLER, taken in the matter, on the date, and at the time and place set out on the title page hereof.

It was requested that the deposition be taken by the reporter and that same be reduced to typewritten form.

It was agreed by and between counsel and the parties that the Deponent will read and sign the transcript of said deposition.

STATE OF GEORGIA:
COUNTY OF FULTON:

I hereby certify that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

February 10, 2015.

BLANCHE J. DUGAS, CCR-B-2290

DEPOSITION ERRATA SHEET

DLS Assignment No. 20639
Case Caption: In Re: New England Compounding Pharmacy, et al.

Witness: SCOTT BUTLER - 02/05/2015

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my deposition taken in the captioned matter or the same has been read to me, and The same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the _____ day of

_____, 20____.

SCOTT BUTLER

Page 173

CERTIFICATE

STATE OF GEORGIA

COUNTY OF FULTON

Before me, this day, personally appeared,
 SCOTT BUTLER, who, being duly sworn, states that the
 foregoing transcript of his deposition, taken in the
 matter, on the date, and at the time and place set out
 on the title page hereof, constitutes a true and
 accurate transcript of said deposition.

SCOTT BUTLER

SUBSCRIBED and SWORN to before me this
 day of _____, 20__ in the
 jurisdiction aforesaid.

My Commission Expires _____ Notary Public

*If no changes need to be made on the following two
 pages, place a check here _____, and return only this
 signed page.*

Page 175

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

SCOTT BUTLER

Page 174

DEPOSITION ERRATA SHEET

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

SCOTT BUTLER